

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO 1029 OF 2019**

DIST - THANE

Pillai Maridas Velswamy,)
R/at. B-01, Hari Har Apartment,)
Plot No.155, 116, Sector No.9,)
New Panvel 41 0206).... APPLICANTS

VERSUS

1. Skill Development and)
Entrepreneurship Department,)
Through its Principal Secretary,)
Having his office at Mantralaya,)
Mumbai 400 032)
2. The Director of Vocational Education))
And Training through the Secretary,)
Having its office at Mantralaya,)
Mumbai 400 032)
3. General Administrative Department,)
Through its Principal Secretary,)
Having his office Mantralaya,)
Mumbai 400 032)
4. The Commissioner for Disabilities,)
Through State of Maharashtra,)
Having office at 3, Church Road,)
Pune 411 013) ...RESPONDENTS

Shri Kranti L.C, learned counsel for the Applicant.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

**CORAM : Justice Mridula Bhatkar (Chairperson)
Mrs Medha Gadgil (Member) (A)**

RESERVED ON : 03.08.2023

PRONOUNCED ON : 02.02.2024

PER : Justice Mridula Bhatkar (Chairperson)

J U D G M E N T

1. The applicant prays that the Respondents be directed to assign the applicant 11th December, 2007 as deemed date of promotion to the post of Class-II (Assistant Apprenticeship Traineeship Advisor/Vice Principal / ITI Principal) and further the Respondents be directed to promote the applicant to the post of Junior Class-I with deemed date of 31st December, 2011. (c). The applicant further prays that he should be considered for the next round of promotion to the post of Class-I.

2. Learned counsel for the applicant has submitted that the applicant is a person with disability afflicted with polio in both the legs. His certificate dated 21.8.1998 shows 50% disability. He is holding Diploma in Industrial Electronics. Learned counsel has further submitted that applicant joined the services of Directorate of Vocational Education and Training on a temporary basis as a full time Craft Instructor from 1.9.1994 to 8.3.1999. He was confirmed on a permanent basis on 8.3.1999 and was appointed to the post of Craft Instructor (Electronics). He was subsequently promoted as Group Instructor on 11.12.2004 and transferred to Girls ITI, Thane on 12.7.2011. It is the contention of the applicant that he was to be promoted to the post of Assistant Apprenticeship Advisor/Vice Principal/Principal ITI. In 2008-09 the promotion lists were prepared. However, the applicant was not considered. He made representation to the Commissioner of Persons with Disabilities on 27.7.2009. On 23.2.2011 seniority list was prepared by respondent no.2 and the applicant was placed at Sr. No.300.

He made representation to the Commissioner of Persons with Disabilities on 2.1.2012. The list of promoted persons was published in Gazette on 15.2.2012. He approached the Hon'ble High Court by filing W.P. No.3161/2012 and following order was passed on 3.4.2014:

“6. In view of our judgment dated 4.12.2013, it is not possible to accept the above contention. The writ petition is therefore allowed. The respondents no.1 to 4 are directed to apply section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 in the matter of promotion to the post of Assistant Apprenticeship Advisor/Vice Principal/Principal (Class-II), Industrial Training Institute. In other words, wherever reservation is applicable for direct recruitment, such reservation shall be made available for promotion also.”

3. Ld. Advocate for the applicant submits that said order dated 3.4.2014 was not complied with hence applicant filed Contempt Petition No.477 of 2014 in W.P. No.3161/2012 and by order dated 10.12.2014 it was recorded that:

“1. The learned Assistant Government Pleader seeks leave to place on record the copy of the office order dated 5 December, 2014 promoting the Petitioner to the post of Assistant Apprenticeship Advisor (Technical) at Government Technical Institute, Ulhasnagar, District Thane. The office order is taken on record and marked “X” for identification.

2. The promotional order is passed subject to the result of Special Leave Petition (Civil) No.18893 of 2014. The petitioner has already reported and taken over the charge of the promotional post. Hence, nothing further is required to be done in this contempt petition.

3. The learned counsel for the Petitioner, however, submits that the Petitioner is entitled to be promoted to the above post with effect from the year 2007.

4. It will be open to the Petitioner to make a representation to the concerned authorities for giving the Petitioner the deemed date of promotion to the higher post.

If such representation is made within two weeks from today, the respondent authorities will consider the same within four weeks from the date of disposal of the Special Leave Petition.

5. *The Contempt Petition is, accordingly, disposed of in the above terms.”*

4. Learned counsel submitted that the State filed SLP No.18893 of 2014 in the Hon’ble Supreme Court against the order dated 3.4.2014 in W.P. No.3161/2012 which came to be dismissed by order dated 8.12.2014. Learned counsel further submitted that as the representation of the applicant was not decided by the Government, the applicant filed W.P. No.5846/2015 and following order was passed on 13.9.2017:-

“9. On receiving such representation, we direct that Principal Secretary, Skill Development and Entrepreneurship Department, Mantralaya, Mumbai to decide the said representation within two months from the date of receipt of such representation on its own merits. We direct the Principal Secretary to her the petitioner personally or through his authorized representative. The Principal Secretary would pass a brief reasoned order on the concerned issue.”

5. Accordingly, Principal Secretary passed order on 15.12.2017 and it was directed to the subordinate officer i.e. Director, Vocational Education and Training to send proposal about applicant’s deemed date to Government and then that proposal is sent to GAD, FD and L&JD for further action.

6. Ld. Advocate for the applicant further submitted that as the applicant was not aware of further development, he therefore filed W.P. No. 2870 of 2019 and the Hon’ble High Court by its order dated 9.8.2019 allowed to withdraw the W.P. with liberty to approach the Tribunal. Hence, the applicant has filed this OA on 16.10.2019.

7. Ld. Advocate for the applicant relies on the order dated 4.12.2013 passed by the Hon'ble High Court in **PIL No.106/2010 filed by National Confederation for Development of Disabled & Anr Vs. Union of India & Ors.** High Court relied on the judgment of the Hon'ble Supreme Court in **Government of India Vs. Ravi Prakash Gupta & Anr (2010) 7 SCC 626**, wherein the Hon'ble Supreme Court has dealt with the question of reservation in the matter of appointment to IAS and held that reservation is applicable to the post of Group A, B, C & D. Para 13 of the order reads as under:

“13. In view of the above directions, it is clear that the respondents will have to give benefits of reservation to persons with disabilities in the matter of promotion to posts in the Indian Administrative Services by applying the Office Memorandum dated 29.12.2005 and subsequent Office Memorandum consistent with the aforesaid judgment dated 8.10.2013 of the Supreme Court and accordingly give benefits of the reservation with effect from the date of issuance of said Office Memorandum dated 29.12.2005.”

8. The said order dated 4.12.2013 was challenged before the Hon'ble Supreme Court in the case of **Union of India & Ors. Vs. National Confederation for Development of Disabled & Anr. reported in (2015) 13 SCC 643** wherein the order of the Hon'ble High Court was confirmed and directions were given to give benefits of the reservation w.e.f. the date of issuance of said Office Memorandum dated 29.12.2005.

9. Ld. Advocate for the applicant submits that in earlier order dated 3.4.2014 in W.P. No.3161 of 2012 the High Court has referred the judgment dated 4.12.2013 in **National Confederation for Development of Disabled & Anr. Vs. Union of India & Ors. (supra)** and specifically stated that the controversy of the deemed date or effective date is already covered. Ld. Advocate for the applicant pointed out para 33 of the affidavit in reply dated

5.1.2021 filed on behalf of Respondents No.1 & 2 by Shri Kailas Sakharam Ravte, Inspector in the office of Directorate of Vocational Education & Training, Mumbai, which reads as under:

“33. With reference to para 7(j) of the OA, I say and submit that there is no policy decision about giving promotion to Persons with Disabilities to Class-II/Class-I and hence inaction on the part of these respondents cannot be said to be illegal and/or bad in law.”

10. Ld. Advocate for the applicant pointed out to GR dated 5.7.2021 issued by GAD about reservation in promotion for disabled employees in Group A and B posts. While applying reservation in promotion a roster is to be followed by points no.1, 26, 51 and 76. Ld. Advocate for the applicant submits that this GR has come after New Act of 2016, wherein 4% reservation is given for promotion. However, as per Old Act of 1995 3% reservation in promotion was applicable and therefore as per decision of the Hon'ble High Court it was confirmed by the Full Bench of the Hon'ble Supreme Court in ***Union of India & Ors. Vs. National Confederation for Development of Disabled & Anr. reported in (2015) 13 SCC 643 (supra)*** regarding 3% reservation from the date of Office Memorandum dated 29.12.2005. Ld. Advocate for the applicant submits that due to inaction on the part of the respondents to promote him by following reservation policy he was promoted as Junior Class-I on 21.10.2022 instead he should have been promoted on 31.12.2011 as per Rule 3(a) of the relevant recruitment rules. Similarly, he states that applicant has not been promoted to Class-I post though he was due on 29.9.2022. 4. Ld. Advocate for the applicant submits that the judgment dated 4.12.2013 in ***National Confederation for Development of Disabled & Anr. Vs. Union of India & Ors. (supra)*** is already referred by the Hon'ble High Court in earlier order dated 3.4.2014 in W.P. No.3161 of 2012 and the controversy of the deemed date or effective date is already covered. Ld.

Advocate for the applicant submits that letter dated 12.1.2015 was written by Under Secretary, Higher and Technical Education Department, Mantralaya to the applicant informing him that proposal for granting deemed date is sent to GAD.

11. Learned C.P.O relied on the short affidavit in reply dated 17.7.2023 of Shri Ashish Kumar Singh, Additional Chief Secretary in the Department of Respondent No. 1. Learned C.P.O has submitted that the applicant was given promotion to Group-B post on 5.12.2014. The State of Maharashtra initially adopted the policy of granting promotion to Group-A & Group-B posts for Persons with Disabilities. But there were no proper instructions from Government of India. The applicant was given the promotion to the post of Vice-Principal, (Class-I Jr) and was posted at Industrial Training Institute, Uran on 21.10.2022. The Central Government in respect of granting promotions with Persons with Disabilities issued Office Memorandum on 17.5.2022 upto the lowest rung of Group 'A'. Thereafter, again the last G.R for granting promotion to Persons with Disabilities was issued on 20.4.2023 and it is not given the retrospective effect. Ld. CPO submits that GAD received the same on 13.1.2015. Ld. CPO submits that proposal received by the GAD (Social Development Coordination) (SDC) was sent to GAD (Services) on 16.1.2015. On 7.2.2015 GAD (Services) sent to GAD (SDC). Ld. PO further submitted that the judgment of the Hon'ble High Court dated 4.12.2013 in *PIL No.106/2010 filed by National Confederation for Development of Disabled & Anr Vs. Union of India & Ors. (supra)* is not applicable to the facts of the present case because the issue regarding IAS was interpreted and applicant is not an IAS.

12. We have considered the landmark judgment of the Hon'ble Supreme Court in the case of **Union of India Vs. National**

Federation of the Blind, (2013) 10 SCC 772, wherein the Hon'ble Supreme Court held that "Section 33 of the Disabilities Act does not distinguish the manner of competition of reservation between Group 'A' and 'B' posts and Group 'C' & 'D' posts respectively. As such one statutory provision cannot be interpreted and apply differently for the same subject matter.

13. Similarly, we have considered the landmark judgment in the case of **Sidda Raju Vs. State of Karnataka & Ors and Vikas Kumar Vs. UPSC (2021) 5 SCC 370**. However, in the landmark judgment of the Hon'ble Supreme Court in the case of **State of Kerala Vs. V.S Leesamma Joseph in Civil Appeal No. 59/2021**, the Hon'ble Supreme Court while dealing with right of promotion of persons with disabilities where the applicant was permanently disabled and assessed 55% due to Polio, appointed as Lower Division Clerk and subsequently promoted to the post of Senior Clerk. She was also promoted to the post of Cashier and she prayed for promotion to the post of Junior Superintendent and consequential benefits. The Hon'ble Supreme Court held that the only caveat to the promotion of the Persons with Disabilities would be if the Government is of the view that the posts in the promotional cadre cannot be reserved for P.W.D category due to functional or other reasons and that should not be a ruse to defeat the reservation in promotion.

14. We have considered the judgment of the Hon'ble Supreme Court wherein the Hon'ble Supreme Court emphasized the full participation in true spirit of the Person with Disabilities in the administration and system. In W.P 3161/2012, Pillai M. Velswamy Vs. Department of Higher Technical Education & Ors, filed by the Petitioner the Hon'ble High Court while allowing the Writ Petition by its order dated 3.4.2014 held that Respondents

No. 1 to 4 were directed to apply Section 33 of P.W.D Act of 1995 in the matter of promotion to the post of Assistant Apprenticeship Advisor/Vice-Principal/Principal, Class-II, ITI. These directions were given wherein reservation is applicable for direct recruitment such reservation shall be made available for promotion also. By speaking to the minutes the Hon'ble High Court by order dated 16.4.2014 gave liberty to the Petitioner to seek deemed date of promotion.

15. In the affidavit in reply filed on behalf by Shri Ashish Kumar Singh, Respondent No. 1, it is submitted that the applicant was promoted to the post of Apprenticeship Advisor vide order dated 5.12.2014. Then again applicant had filed W.P 5846/2016. It was disposed of on 12.9.2017 with directions to decide the comprehensive representations of the applicant. It is to be noted that no order of granting deemed date of promotion or directing the Respondents to promoted him to the post was given. By order dated 15.12.2017, the Secretary, Skill, Employment, Entrepreneurship and Innovation Department (SEEID) directed the Director, Vocational Education to hold DPC and decide the representation of the applicant for grant of deemed date of promotion. The Committee decided positively that he should be given a deemed date of 2012 for the post of Assistant Apprenticeship Advisor. However, that decision required approval from G.A.D, F.D, L & J Department as no policy of giving promotion to Group A & B was chalked out by the State Government. The General Administration Department issued G.R dated 5.7.2021 by which the State Government adopted policy of granting promotions to Group A & B posts to Persons with Disabilities. Thus, on the basis of that G.R, the applicant was granted next promotion to the post of Vice-Principal, Class-I, (Junior) and was posted at I.T.I, Uran. Subsequently, it appears

from the affidavit in reply filed, the State of Maharashtra has adopted the policy and directions given by the Government of India and thus when the Government of India issued O.M dated 17.5.2022 granting reservation in promotion for Persons with Disabilities upto lowest rung of Group-A. Thereafter the State Government modified its policy and issued G.R dated 20.4.2023 accordingly. By the said G.R, the promotion can be given upto the lowest rank of Group-A and the applicant has already been given promotion to the post of Class-I, Junior by order dated 21.10.2022. It is specifically stated in the affidavit in reply that in the policy of granting deemed date of promotion as per G.R dated 6.6.2002, the deemed date is fixed and given of the junior officers who is promoted prior to the Government servant who claims deemed date of promotion. However, in the present case, it is a matter of fact that no junior person has been granted promotion prior to granting promotion to the applicant. Thus, we conclude that the applicant was granted promotion in the absence of policies framed by the State Government only because of the repeated legal battle he was constrained to fight. Further in Government service, though promotion is an exception, basically it depends upon the availability of the vacancy and also the policy decision of the Respondent-State to fill up those posts by promotion. Unfortunately, the applicant had knocked the doors of Courts for want of active initiation by the Respondent-State in framing the policy for reservation in promotion for Persons with Disabilities.

16. Hence, we are view that when no junior to the applicant was promoted before him, no deemed date can be granted to the applicant.

17. In view of the above, Original Application stands disposed of.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 02.02.2024
Dictation taken by : A.K. Nair.