

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 704 OF 2022

DISTRICT : PUNE

Shri Nandkumar Manohar Pore,)
Retd Police Head Constable – Electrician,)
O/o: The Addl. Director General of Police,)
and Director, Police Wireless, Pune)
Dr. Homi Bhabha Road, Chavan Nagar,)
Pune 411 008.)
R/at 225, Somwar Peth, Rajwada Nx,)
Flat o. 11, Near Rajwada,)
Satara 415 001.)...**Applicant**

Versus

1. The Director General of Police,)
Maharashtra State,)
Chhatrapati Shivaji Maharaj Marg,)
Colaba, Mumbai-400 001.)

2. The Addl. Director General of Police,)
and Director, Police Wireless,)
Dr. Homi Bhabha Road,)
Chavan Nagar, Pune 411 008.)...**Respondents**

Shri U.V. Bhosle, learned advocate for the Applicant.

Ms Archana B.K, learned Presenting Officer for the Respondents.

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

DATE : **21.11.2022**

PER : **Justice Mridula Bhatkar (Chairperson)**

J U D G M E N T

1. The applicant prays that the impugned order dated 25.6.2018 passed by Respondent no. 2 be quashed and set aside and further the Respondents may be directed to grant the applicant 3 benefits of time bound promotions after exempting him from passing the departmental examination.

2. Learned counsel for the applicant submits that he was selected and joined at Police Head Constable on 8.1.1984 and he retired on 30.6.2016. Learned counsel for the applicant further submits that since he has put in more than 32 years of service, he is entitled to 3 benefits of time bound promotion. Learned counsel for the applicant states that he was not granted the benefits of time bound promotion as he has not cleared the Departmental Examination. Learned counsel for the applicant further stated that the applicant has submitted representation on 31.3.2018 to Respondent no. 2, stating therein that since he has completed 45 years of age and further in view of the judgment of the Hon'ble Bombay High Court dated 22.11.2017 in Mukund S. Daima Vs. State of Maharashtra & Ors, W.P No. 3643/2009, he should be granted the benefits of time bound promotion.

3. We have considered similar issue and in the case of Arun Shankar Kharbude & Ors Vs. State of Maharashtra & Ors, in O.A

1080/2018 & Ors, by order dated 10.3.2022, the Respondents were directed to issue time bound promotion/Assured Career Progressive benefits to the applicants from the date they have completed age of 45 years.

4. In the present case, the applicant who is working as Police Head Constable-Electrician in Wireless section of the Police Department prays that the benefit of the exemption of passing the Departmental Examinations after 45 years of age should be given to him as he is similarly situated like Shri M.S Daima, in W.P 3643/2009, in whose favour the judgment dated 21.11.2017 is passed by the Hon'ble Bombay High Court, Aurangabad Bench.

5. It is necessary to point out to O.A 749/2008 of Mr Mukund S. Daima, the same relief was rejected by the Division bench of this Tribunal by judgment dated 26.2.2008. The said judgment was challenged by Shri M.S Daima before the Hon'ble Bombay High Court, Bench at Aurangabad in W.P 3643/2009 and by order dated 27.11.2017 the judgment of this Tribunal was set aside and the Writ Petition was allowed. Another O.A 845/2008 was filed by Ashok R. Dhote and O.A 844/2008 was filed by Pratap J. Kuwar for the similar relief before the Tribunal, which was claimed by Shri Daima. Both the Original Applications No. 845/2008 & 844/2008 were dismissed by the Tribunal by judgment dated 5.11.2009. Thereafter, applicant Shri P.J Kuwar, challenged the order before the Hon'ble Bombay High Court by filing Writ Petition No. 17/2011 and the same was rejected on 14.11.2011. Thus, the judgment dated 14.11.2011 of the Hon'ble Bombay High Court in W.P 17/2011 (Shri P.J Kuwar's case) & judgment dated 21.11.2017 of the Hon'ble Bombay High Court, Aurangabad Bench in W.P 3643/2009 (Shri M.S Daima's case) are contrary. However,

the judgment in P.J Kuwar's case is the first and the judgment in Daima's case is later one.

6. Thus, we need to look into the law of precedence. Learned counsel for the applicant has relied on the judgment of the Full Bench of Hon'ble Bombay High Court in **Kamleshkumar I. Patel Vs. Union of India & Ors, 1994 Mh.L.J 1669**. The facts of the case were covered under the Foreign Exchange and Prevention of Smuggling Activities Act, 1974. While dealing with the other issues, the Hon'ble High Court also decided the issue of precedent as the dilemma was earlier faced by the Hon'ble High Court of coming across two contrary judgments of the High Court. The Full Bench of the Bombay High Court in the case of Kamleshkumar has relied on the judgment of the Calcutta High Court in **Bholanath Vs. Madanmohan, AIR 1988 Calcutta 1, at p. 5-7**. One view is that in such case the High Court has no option in the matter and it is not for the High Court to decide which one it would follow, but it must follow the later one, as the later would supersede the former and would bind the subordinate, as in the case of two contrary legislations by the same Legislature, the later would be governing one. It was also observed further:-

“The other view is that in such a case the High Court is not necessarily bound to follow the one which is later in point of time, but may follow the one which, in its view is better in point of law.”

Thus, which is appearing to be reasonable or more reasonable is to be preferred and followed. In Bholanath's case, the ratio laid down by the Hon'ble Supreme Court in the case of **Atma Ram Vs. State of Punjab, AIR 1959 S.C 519** was relied. In **Kamleshkumar's** case (supra), the Hon'ble High Court has quoted the observations in Salmond on Jurisprudence, 12th Edition, page 153.

“Where authorities of equal standing are irreconcilably in conflict, a lower court has the same freedom to pick and choose between them as the schizophrenic court itself. The lower court may refuse to follow the later decision on the ground that it was arrived at per incuriam, or it may follow such decision on the ground that it is the latest authority. Which of these two courses the court adopts depends, or should depend, upon its own view of what the law ought to be.”

7. We came across Judgment dated 25.1.2022 passed by the Hon'ble High Court of Judicature at Bombay, Nagpur Bench in W.P 5031/2021, The State of Maharashtra & Ors Vs. Sadanand N. Thote & ors, in which the Division Bench while dealing with the issue of time bound promotion of similarly situated persons from the Wireless Department, relying on the judgment of the Division Bench of the Hon'ble Bombay High Court, Aurangabad Bench dated 21.11.2017 in W.P 3643/2009, allowed the said Writ Petition. The Division Bench has also considered the judgment of the Tribunal dated 5.11.2009 in O.A 844 & 845/2008, wherein a similar prayer of time bound promotion was refused. The Division Bench in State of Maharashtra & Ors Vs. Sadanand N. Thote has also taken into account the order passed by the Division Bench of the Hon'ble High Court dated 14.1.2011 in Writ Petition No. 17/2011, while dismissing the Writ Petition filed by the State of Maharashtra and upheld the order of the Tribunal dated 5.11.2009. The Division Bench further in the judgment dated 25.1.2022, in para 7 of its judgment has relied on the judgment of the Hon'ble Supreme Court in **State of Uttar Pradesh & Ors Vs. Arvind Kumar Srivastava & Ors (2015) 1 SCC 347** on the ground of parity, especially in the services matters and held as follows:-

“22.3. However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to

itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularization and the like (see K.C Sharma v. Union of India). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

8. Thus, the issue is not res-integra and hence we allow the Original Application with following order:-

ORDER

The Respondents are directed to issue time bound promotion/Assured Career Progressive benefit to the applicant from the date he has completed the age of 45 years. The Respondents shall fix the salary of the applicant, pay him the arrears and revise hisr pension. The Respondents are directed to comply this order within three months from the date of this order. No order as to costs.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 21.11.2022
Dictation taken by : A.K. Nair.