

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 235 of 2021 (S.B.)

Prakash Shriram Thakre,
Aged about 60 years,
Occupation : Retired P.S.I.
R/o Dubewar Layout, Pusad,
Tq. Pusad, District Yavatmal.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Additional Chief Secretary,
Home Department, Mantralaya, Mumbai-440 032.
- 2) The Director General of Police,
M.S. Old Vidhan Bhawan, Kolaba,
Mumbai.
- 3) The Commissioner of Police,
Amravati Division, Amravati.
- 4) The Superintendent of Police,
Yavatmal, Tq. and Dist. Yavatmal.
- 5) The Accountant General,
Maharashtra, Civil Lines, Nagpur.

Respondents.

S/Shri J.S. Wankhede, S.V. Ingole, Advocates for the applicant.
Shri A.P. Potnis, learned P.O. for the respondents.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Dated :- 21/12/2022.

JUDGMENT

Heard Shri J.S. Wankhede, learned counsel for the applicant and Shri A.P. Potnis, learned P.O. for the respondents.

2. The case of the applicant in short is as under –

The applicant was appointed on the post of Police Constable in the year 1986. Thereafter, he was promoted as Police Head Constable. On 02/11/2015, initially the applicant was promoted on temporary basis for two months from Head Constable to Police Sub Inspector (PSI). After completion of two months for temporary promotion, again respondent no.3 issued letter for further promotion for two months as PSI and thereafter time to time the respondents issued temporary promotion order as PSI to the applicant. After various temporary promotions from time to time, the applicant worked as PSI without interruption from 02/11/2015. The applicant is retired from service on attaining the age of superannuation on 21/08/2018. At the time of retirement, he was working on the post of PSI, but the respondents not granted the pensionary benefits of the post of PSI. The respondents have granted the pension on the post of Police Head Constable. Therefore, he approached to this Tribunal for following reliefs –

“(1) release the pensionary benefits of the applicant forthwith from the date of retirement of the applicant i.e. 31/08/2018 on the basis of last drawn pay of the post from which the applicant stand retired i.e. P.S.I.;

2) direct the respondents to decide the representation made by the applicant to the respondent no.3 dated 7/1/2020 and 11/1/2020 (Annex-A6 & A7) and accordingly release the pensionary benefits in

view of the Judgment and order dated 07/06/2019 in O.A.No.1041/2017 with connected matters at (Annexure-A-8) passed by the MAT, Nagpur.”

3. The O.A. is strongly opposed by the respondents on the ground that the applicant was temporarily promoted. There was no any regular promotion, therefore, he is not entitled for the pension of the post of PSI.

4. The learned counsel for applicant has pointed out the Judgment of the Maharashtra Administrative Tribunal, Principal Bench, Mumbai in O.A. No.1041 of 2017 with other connected matters, decided on 07/06/2019.

5. From the perusal of the Judgment, it appears that in the cited Judgment the applicant was temporarily promoted on the post of PSI, but pension was granted of the post of ASI. In para nos.28,29 & 30 following observations were made –

“28. Now, turning to the facts of the present case, admittedly, the Respondents have extracted the work of PSI from the Applicants. On the cost of repetition, I would again like to mention that, there is no defence of non-eligibility or absence of substantive post. Therefore, harmonious construction of the Pension Rules in the light of aforesaid Judgment of Hon’ble Supreme Court clearly spells that, even if the promotion was under the garb of temporary promotion, the Respondents cannot deny retiral benefits to the Applicants on the basis of last drawn pay from which they stand retired. Needless to mention that the pension is not charity or bounty. It is the right of Government employee. The principle enunciated by Hon’ble Supreme Court in various decisions referred to above, are clearly attracted to the present set of facts. Therefore, it would be highly unjust and

iniquitous to deny the pensionary benefits to the Applicants. Such pensionary benefits conferred upon them by statute cannot be taken away under the guise of temporary promotion for no fault on the part of Applicants, particularly after extracting the work of promotional post from them. This conclusion is again fortified in view of the corrigendum issued by State of Maharashtra on 09.06.2016, which specifically provides to consider basic pay fixed for the post from which an employee has been retired for the purposes of grant of pension.

29. Suffice to say, the denial of such right by the Respondents is contrary to the Rules and fundamental rights of the Applicants to receive the pension. Such statutory right cannot be taken away under the garb of executive order of temporary promotion.

30. In view of aforesaid discussion, I have absolutely no hesitation to sum up that the Applicants are entitled to the pension on the basis of last drawn pay, which was of the rank of PSI and the applications deserve to be allowed.

6. The said O.A. No.1041 of 2017 with other connected matters was allowed and the respondents were directed to pay retiral benefits to the applicants on the basis of last drawn pay of the post from which they stand retired and shall release all consequential benefits within three months.

7. In view of the Judgment of the Maharashtra Administrative Tribunal, Principal Bench, Mumbai in O.A. No.1041 of 2017 with other connected matters, decided on 07/06/2019 the following order is passed –

ORDER

(i) The O.A. is allowed.

(ii) The respondents are directed to grant retiral benefits to the applicant on the basis of last drawn pay of the post from which he stands retired and shall release all consequential benefits to him within a period of three months from the date of receipt of this order.

(iii) No order as to costs.

Dated :- 21/12/2022.

(Justice M.G. Giratkar)
Vice Chairman.

dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 21/12/2022.