

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO.177/2011.**

Baburao Shyamrao Hambarde,  
Aged about 58 yrs.,  
Occ-Service,  
R/o C/o Shri Ashokro Wadje,  
Garden Layout, Bezonbag,  
Kmaptee Road, Nagpur-4.

**Applicant**

**-Versus-**

- 1) The State of Maharashtra,  
Through its Secretary,  
Department of School Education & Sports,  
Mantralaya, Mumbai-440 032.
- 2) The Director of Education (M.S.),  
(Secondary and Higher Secondary),  
Pune-1.
- 3) The Chief Executive Officer,  
Zilla Parishad, Nagpur.
- 4) The Principal,  
District Institute of Education & Training,  
Shastri Chowk, Bhandara.
- 5) Shri S.H. Dhekne,  
Secretary, Maharashtra State Board of  
Secondary and Higher Secondary Education,  
Shivaji Nagar, Pune.
- 6) Shri M.V. Gosavi,  
Divisional Secretary, Maharashtra State Board of  
Secondary and Higher Secondary Education,  
Pune Divisional Board, Pune.

- 7) Shri V.S. Mhatre,  
Deputy Director (Project),  
Maharashtra Prathamik Shikshan Parishad,  
Jawahar Bal Bhavan, Churni Road, Mumbai-4.
- 8) Shri P.S. Pathare,  
Divisional Secretary, Maharashtra State Board of  
Secondary and Higher Secondary Education,  
Auranbagad Divisional Board, Auranbagad.
- 9) Shri A.W. Pardhi,  
Divisional Secretary, Maharashtra State Board of  
Secondary and Higher Secondary Education,  
Nagpur Division, Nagpur.

**Respondents**

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Shri S.M. Khan, Advocate holding for Shri P.C. Marpakwar, Ld.  
counsel for the applicant.  
Shri A.M. Ghogre, the learned P.O. for respondent Nos.1,2 and 4.  
None appeared for respondent Nos.3 & 5 to 9.

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**Coram:- Hon'ble Shri J.D. Kulkarni,**  
**Vice-Chairman (J).**

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**JUDGMENT**

**(Delivered on this 3<sup>rd</sup> day of May 2017.)**

Heard Shri S.M. Khan, Advocate holding for Shri P.C.  
Marpakwar, the learned counsel for the applicant, Shri A.M. Ghogre,  
the learned P.O. for respondent Nos.1, 2 and 4. None appeared for  
respondent Nos.3 & 5 to 9.

2. The applicant belongs to Scheduled Caste (SC) category and was appointed as Deputy Education Officer (Maharashtra Education Service, Class-II) (Administrative Branch) vide order dated 9.11.1983. He was promoted in the cadre of Maharashtra Education Service, Class-I, (Administrative Branch) w.e.f. 27.12.2003 and was posted as Senior Lecturer in District Institute of Education & Training, Bhandara as per order dated 19.12.2003.

3. According to the applicant, on 21.10.2010, the respondents have issued orders of promotion in respect of 17 officers from M.E.S., Class-I (Administrative Branch) to the post of Deputy Director of Education which is equivalent to super class-I category in the pay scale of Rs. 15600-39100 plus grade pay of Rs. 6600/-.

4. On 23.9.2010, the applicant received a communication whereby he was directed to produce caste validity certificate. It was intimated that in case he does not produce the caste validity certificate, he will not get promotion to the post of Deputy Director of Education. The applicant, therefore, obtained the caste validity certificate on 30.10.2010 and forwarded the same to the respondent department on 1.11.2010. He requested the respondent authority to issue promotion order. In the meantime, seven juniors were promoted as Deputy Director of Education. But the applicant was

not considered. He was also not paid salary from 1.12.2009 to 29.8.2010. The applicant made representation on 11.5.2010. But no action was taken.

5. The applicant has prayed that he shall be granted deemed date of promotion in the cadre of super class-I category w.e.f. 21.10.2010 and all consequential benefits shall be granted to him from that date. He has also claimed salary for the period from 1.12.2009 to 29.8.2010.

6. From the reply filed on behalf of respondent No.1, it seems that the applicant was promoted to the post of Deputy Director of Education. It is also admitted that, some juniors have been promoted earlier to the applicant. According to the respondents, as per G.R. dated 11.6.1993, if a junior has been given regular promotion, then only senior can get deemed date. In case of the applicant, his juniors were promoted on temporary basis and, therefore, the applicant cannot get deemed date of promotion.

7. The respondents further submitted that the applicant was transferred from Bhandara to Zilla Parishad, Sindhudurg as Education Officer (Primary) vide order dated 30.5.2008 issued by respondent No.1. The applicant, however, did not join and requested that his transfer be cancelled on the ground of his personal difficulties.

His request was, however, not considered. Respondent No.2 vide letter dated 17.11.2009, issued to the Deputy Director of Education, Nagpur informed that the applicant did not join at the place of his transfer i.e. at Sindhudurg, as he was relieved from the post at Bhandara. Respondent No.2, therefore, directed the Deputy Director of Education, Nagpur to ensure that the applicant was relieved from Bhandara forthwith. However, the applicant filed O.A. No. 857/2009 and this Tribunal was pleased to grant *ad interim relief* in favour of the applicant on 1.12.2009 and directed that the applicant shall not be relieved till next date, if not already relieved. However, the applicant was already relieved on 30.11.2009 and, therefore, O.A. No.857/2009 was dismissed on 7.5.2010. Vide letter dated 19.4.2011, it has been decided by respondent No.4 that since the applicant was absent from 1.12.2009 to 19.8.2010, he was not entitled to salary.

8. In view of the facts discussed in foregoing paras, there seems to be no doubt that the applicant was promoted to the post of Deputy Director of Education. But before he was relieved from the post, some of his juniors were promoted and, therefore, the applicant should have been given deemed date of promotion from the date on which juniors were promoted.

9. The respondents have referred to the G.R. dated 11.6.1999 which is placed on record at page No.90 of the paper book. This G.R. only states that the cases of deemed dates of promotion shall not be considered by the department at its level, but it shall be forwarded to the General Administration Department and the Finance Department of the Govt. of Maharashtra.

10. The applicant has filed rejoinder and submitted that the G.R. dated 11.6.1993 has been superseded by another G.R. issued by the Govt. of Maharashtra dated 6.6.2002. The G.R. dated 6.6.2002 is placed on record at Exh. A-9 at pages 112 to 116 of the paper book (both inclusive). This G.R. refers to the G.R. dated 11.6.1993. The G.R. dated 6.6.2002 gives guidelines as to how the cases of deemed dates of promotion shall be dealt with.

11. From the facts on record, it is clear that there is no doubt that the applicant was promoted to super class-I post and he has produced caste validity certificate within time. There is nothing on record to show that, the applicant was responsible for not being relieved from Bhandara so as to join on promotional post. On the contrary, it seems that the applicant was not relieved from Bhandara and, therefore, he was required to file O.A. No. 857/2009. In the said O.A., this Tribunal directed the respondents not to relieve the applicant

until next date provided, he is not already relieved on 30.1.2009. The respondents in the said O.A. made a statement that the applicant was relieved on 30.11.2009 afternoon. Thus, it is an admitted fact that the applicant was not relieved from his post from Bhandara till 30.11.2009. There is nothing on record to show that the applicant was responsible for not being relieved. Thus if it is a fact that the applicant was not relieved from Bhandara by the competent authority, there was no fault on the part of the applicant for not joining at Sindhudurg immediately and if in the meantime some juniors are promoted and joined on the promotional post, the applicant cannot be blamed for the same. It is, however not so and it seems that even for the argument sake, it is accepted that the applicant was relieved on 30.11.2009, he did not join the post and remained absent from 1.12.2009 to 19.8.2010.

12. The applicant in his rejoinder affidavit has stated that he was not relieved from his post at Bhandara for about 18 months and prior to his relieving, he made representations on 11.5.2010, 13.9.2010 and 16.11.2010 and requested that he shall be retained at Bhandara, as he was to retire within one month and that his wife was also working at Bhandra. The applicant also claims to be a physically disabled. The Government, however, did not respond to his representation for cancellation of transfer and relieved him *ex-parte* on 30.11.2009. It is

stated that it was not mentioned in the relieving order as to whom the charge shall be handed over. The applicant, however, stated that he was on casual leave from 30.11.2009 to 2.12.2009. He had stated that the Government cancelled his transfer order at Sindhudurg, but after a gap of two months he was posted as Education Officer at Nagpur vide order dated 30.6.2010 which was received by him on 18.8.2010. The applicant accordingly joined his post at Nagpur on 20.8.2010. Even accepting all these submissions, it will be clear that the fact remains that the applicant did not join his post at Sindhudurg, though he was relieved. However, it must be noted that the applicant has filed representation for regularization of his period and it is stated that the representation dated 13.9.2010 filed by the applicant for grant of salary from 1.10.2009 to 19.8.2010 is still undecided. In my opinion, it would be necessary to go into the merits of the absence of the applicant during this period. It will be in the interest of justice to direct the respondents to give thoughtful consideration to the representation of the applicant dated 13.9.2010 and the respondent authorities may decide as to whether the absence period of the applicant can be treated as duty period, leave period or extraordinary leave period or can grant any other leave as may be admissible to the applicant, particularly considering the fact that the applicant has now retired on superannuation and is also a physically handicapped person.



13. In view of the discussion in foregoing paras, following order is passed:-

**ORDER**

- 1) The O.A. is partly allowed.
- 2) The respondents are directed to grant deemed date of promotion to the applicant in the cadre of super class-I category in the pay scale of Rs. 15600-39100 plus grade pay of Rs. 6600/- with effect from 21.10.2010 i.e. the date on which his juniors were promoted.
- 3) The respondents are accordingly directed to fix the pay of the applicant in the promotional post and grant him all consequential benefits w.e.f. 21.10.2010.
- 4) The respondents are directed to consider the representation filed by the applicant for grant of salary from 1.12.2009 to 29.8.2010 and to take a decision to regularize the said period as per rules without being influenced by any of the observations made in this O.A.
- 5) Necessary order shall be passed within one month from the date of this order.
- 6) No order as to costs.

(J.D.Kulkarni)  
Vice-Chairman (J)

