

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 649/2017 (S.B.)

Kiran S/o Parsu Mane,
Aged 54 years, Occ. Service,
R/o C/o Government Institute of Science Hostel,
Civil Lines, Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Principal Secretary,
Higher & Technical Education Department
having its office at Mantralaya, Mumbai-400 032.
- 2) Director,
Higher Education, Maharashtra State,
Central Building, Pune.

Respondents.

Shri S.P. Palshikar, Advocate for the applicant.

Shri P.N. Warjurkar, P.O. for the respondents.

**Coram :- Hon'ble Shri Anand Karanjkar,
Member (J).**

Date of Reserving for Judgment : 26th July, 2019.

Date of Pronouncement of Judgment : 22nd August, 2019.

JUDGMENT

(Delivered on this 22nd day of August,2019)

Heard Shri S.P. Palshikar, learned counsel for the
applicant and Shri P.N. Warjurkar, learned P.O. for the respondents.

2. The applicant was appointed as Senior Clerk in the Government service on 5/2/1997, he was selected by the Regional Secondary Service Selection Board, Pune. On 30/5/2000 the applicant was promoted as Head Clerk. The promotion was on seniority-cum-merit basis.

3. The applicant passed the departmental qualifying examination on 12/3/2003. The next promotional post was in General State Service, Class-II and for that promotion it was necessary to pass the examination conducted by the Department. The applicant passed the examination for entering the General State Service, Class-II on 28/4/2006 and become eligible for the promotion in that cadre.

4. On 27/6/2008 the applicant was promoted to the post of Warden, he joined the duty as Warden on 2/7/2008. The recruitment rules came into force w.e.f. 29/8/2008. It is contention of the applicant that as per the rules, the applicant become eligible for the promotion in the General State Service, Class-II from the date on which he passed the examination.

5. The Maharashtra Public Service Commission published advertisement no.47/2013 on 13/8/2013 to fill the post of Superintendent in Maharashtra Education Service, Group-B. This action of the Government was challenged by the applicant and others by filing O.A.No.822/2013. It is submitted that the Government of

Maharashtra made submission before the Mumbai Bench that the Government was intending to decide the issue regarding promotions of the applicant and other persons, but it was necessary to amend the rules and accordingly the O.A. came to be decided with direction to the Government. It is grievance of the applicant that on 26/7/2016 the respondents promoted the applicant as Registrar. Now the applicant is working as Registrar in the Government Institute of Science, Nagpur. It is submitted that the applicant time to time made representations to the respondents for giving him deemed date promotion, but it was not considered and consequently the present O.A. is filed by the applicant. The applicant is claiming that deemed date promotion be granted to him in General State Service w.e.f. 28/4/2006. The second deemed date promotion in MES, Class-II w.e.f. 28/4/2009 and third deemed date promotion in MES, Class-I w.e.f. 28/4/2012.

6. The application is resisted by the respondents vide their reply which is at page no.58. It is submission of the respondents that the claim of the applicant is not based on any rule or law. The entire claim is imaginary, therefore, the applicant has no case and application is liable to be dismissed. It is contention of the respondents that the applicant entered the service as Senior Clerk on 5/2/1997, he was promoted as Head Clerk on 30/5/2000 and then as Warden on

27/6/2008. The next promotion in MES, Class-II service is given to the applicant vide order dated 22/7/2016 and presently the applicant is working as Registrar in the Government Institute of Science, Nagpur.

7. It is accepted by the respondents that O.A.No. 822/2013 was filed by the applicant and others and in that application the applicant had claimed promotion on the post in Group-B cadre of Maharashtra Education Service. It is submitted that the O.A. came to be decided by the Principal Bench of MAT, Mumbai. According to the respondents, the proposal is forwarded to the Government to amend the rules and it is pending.

8. The main contention of the respondents is that as per the service conditions of the applicant, he is not entitled to claim the time bound promotions as claimed by him. According to the respondents, the applicant cannot claim promotion as of the right after interval of three years, but the promotion can be given only when the Government servant is eligible for it as per the seniority and merit and whenever posts are vacant. It is contention of the respondents that the applicant is claiming deemed date, but it is nowhere shown in the entire application that any person junior to the applicant was promoted disregarding the principle of seniority-cum-merit and for this reason, it is submitted that the application is devoid of any merit and it is liable to be dismissed.

9. After hearing the contention on behalf of the applicant and the respondents, one thing is certain that the rules were framed by the Government vide Notification dated 29/8/2008. The Rule-3 speaks about the appointment to the post of Junior Administrative Officer/Superintendent / Registrar, Group-B. The Rule 3 (a) is as under –

“3 (a) by promotion of a suitable person on the basis of seniority subject to fitness, from amongst the persons holding the post from the cadre of General State Service, Group-B (Administrative Branch Ministerial cadre) on the establishment of Directorate of Higher Education, having not less than three years regular service in that post; or”

10. After reading Rule 3 (a) one thing is clear that the Government servant holding the post from Group-B cadre of General State Service on the establishment of Directorate of Higher Education for a period not less than three years was eligible for the promotion. After reading the application and perusing the documents, I am unable to accept that at any time before **26/7/2016** the applicant was brought in General State Service, Group-B either by promotion or by nomination. The O.A.No. 822/2013 was decided on 28/11/2013 by the Principal Bench of MAT and thereafter the respondents promoted the applicant vide order dated 26/7/2016 as Registrar on a post in Maharashtra Education Service, Group-B. The applicant is claiming

that he was entitled for the promotion in the General State Service w.e.f. 28/4/2006 and he is further claiming that he was entitled for a post in Maharashtra Education Service, Class-II w.e.f. 28/4/2009 and promotion on the post in MES, Class-I w.e.f. 28/4/2012. After going through all the documents which are placed on record and rules published vide Notification dated 29/8/2008, it is not possible to accept that any time bound scheme was framed by the Government to promote the Head Clerk and bring him in the General State Service, Class-II on completion of three years and then on completion of three years service in MES, Class-II promote him on a post MES, Class-I.

11. The legal position is settled. The promotion is not right, therefore, unless it is mentioned in the service conditions the employee can't claim time bound promotion. The promotion policy is always governed as per the vacancies of the promotional posts and subject to the seniority-cum-merit. In the present case, it is nowhere shown by the applicant that as per the terms and conditions in his appointment order, he was assured that he would get the time bound promotions as claimed by him. Similarly, it is nowhere shown that any person junior to the applicant was promoted and the applicant was superseded. After going through the documents on record it is not possible to accept that the applicant was superseded by any other junior person or promotional post was vacant, but he was not

deliberately considered, on the contrary it appears that considering the merits of the applicant and his seniority he was promoted by the respondents as Registrar i.e. on a post in Maharashtra Education Service, Class-II vide order dated 26/7/2016. It is rightly contended by the respondents that merely because the applicant possesses the qualification for the promotion to the higher post and was eligible as per the seniority this would not give him vested right to claim promotion after interval of three years. It is nowhere shown by the applicant that the promotional posts were vacant and he was due and eligible and posts were allowed to remain vacant for years only to defeat his claim. Under these circumstances, I am compelled to say that there is no merit in the application. Hence, the following order –

ORDER

The O.A. stands dismissed with no order as to costs.

Dated :- 22/08/2019.

(A.D. Karanjkar)
Member (J).

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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 Member (J).

Judgment signed on : 23/08/2019.

Uploaded on : 27/08/2019.