

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.721/2016.

(S.B.)

Pravin Vasantao Wankhede,
Aged Adult,
Occ-Service as a Divisional Joint Registrar,
R/o Mahal, Nagpur.

Applicant.

-Versus-

- 1) The State of Maharashtra,
Through its Secretary,
Department of Cooperation & Textiles,
Mantralaya, Mumbai-400 032.
- 2) The Registrar,
Office of Commissioner for Cooperation and
Registrar, Cooperative Societies,
State of Maharashtra,
Central Building, Pune-1.

Respondents

Shri S.S. Ghate, the learned counsel for the applicant.
Shri P.N. Warjekar, the learned P.O. for the respondents.

Coram:-Shri J.D. Kulkarni,
Vice-Chairman (J)

ORAL ORDER

(Passed on this 3rd day of January 2019.)

Heard Shri S.S. Ghate, the learned counsel for the
applicant and Shri P.N. Warjekar, the learned P.O. for the
respondents.

2. The applicant was appointed as District Deputy Registrar, Cooperative Societies, Grade-A and was initially posted at Akola and then he was transferred to Bhandara. He was promoted and posted as Managing Director of Nagpur District Central Cooperative Bank vide order dated 26.7.2012. He was relieved accordingly for joining at promotional post and approached the office of Managing Director, Nagpur District Central Cooperative Bank on 28.7.2012, but was not permitted to join on duty. The Nagpur District Central Cooperative Bank intimated to the Secretary, Department of Cooperation, Government of Maharashtra vide communication dated 28.7.2012 that the applicant cannot be allowed to join the duty as Managing Director. The applicant also intimated the said fact to the Government from time to time. He requested that either he may be allowed to join as Managing Director or his posting may be modified. Lastly, the Government issued an order dated 27.11.2012 whereby posting order of the applicant has been modified and the applicant was posted as Joint Registrar, Tribal Development Department, Nashik. Applicant accordingly joined at Nashik on 28.11.2012.

3. It is an admitted fact that, though the applicant was promoted vide order dated 26.7.2012, he could not join his

promotional post during the period from 26.7.2012 to 25.12.2012 and there was no fault on his part for not joining the said post.

4. Vide impugned order dated 20.8.2016, it was intimated to the applicant as under:-

“आपल्या उपरोक्त संदर्भाधीन पत्रान्वये, श्री. पी. व्ही. वानखेडे यांना उपनिबंधक, सहकारी संस्था संवर्गातून सहनिबंधक, सहकारी संस्था संवर्गात पदोन्नती दिल्यानंतर ते दि. २६.१२.२०१२ रोजी सदर पदावर रुजू झाले आहेत. सहकार आयुक्त कार्यालयाने दि. १.२.२०१३ च्या आदेशान्वये त्यांची दि. २६.१२.२०१२ या रुजू पदावर वेतन निश्चिती केली आहे. दरम्यान दि. ४.६.२०१५ च्या शासन जापनान्वये श्री. पी. व्ही. वानखेडे यांचा दि. २६.७.२०१२ ते ६.१२.२०१२ हा सक्तीचा प्रतीक्षाधीन कालावधी मंजूर करण्यात आला आहे. त्यामुळे त्यांच्या वेतन निश्चिती आदेशात दि. २६.१२.२०१२ ऐवजी दि. २६.७.२०१२ अशी सुधारणा करण्यात यावी किवा कसे, याबाबत मार्गदर्शन मागितले आहे.

या अनुषंगाने आपणास कळविण्यात येते कि, श्री. वानखेडे यांच्या वेतन निश्चिती दिनांकात बदल करणे आवश्यक आहे किवा कसे, याबाबत कृपया अभिप्राय देण्याची विनंती वित्त विभागास करण्यात आली होती. त्यावर वित्त विभागाने म.ना.से. (सेवेच्या सर्वसाधारण शर्ती) नियम १९८१ मधील नियम ३२ मधील तरतुदीनुसार जेव्हा वाढीव जबाबदार्यांसहित बढतीचे नवीन पद ग्रहण करावयाचे असेल तेव्हा नवीन पदाची कर्तव्ये स्वीकारली असतील त्या तारखेपासूनच उच्चस्तर वेतन अनुद्नेय होईल, असे नमूद केले असल्याने व श्री. वानखेडे यांनी दि. २६.१२.२०१२ रोजी पदाची कर्तव्ये स्वीकारली आहेत. त्यामुळे विभागाने श्री.वानखेडे यांची दि. २६.१२.२०१२ रोजी केलेली वेतन निश्चिती योग्य असून दि.२७.७.२०१२ ते २५.१२.२०१२ या कालावधीत श्री. वानखेडे यांना उपनिबंधक पदावरील वेतन अनुद्नेय राहिल, असे कळविले आहे.”

5. The aforesaid communication has been challenged by the applicant in this O.A. and the applicant is claiming that the said communication be quashed and set aside and he be treated as on duty during the period from 26.7.2012 to 25.12.2012 and the respondents be directed to regularize the pay of the applicant for such period as Joint Registrar, Tribal Development Department.

6. The respondents in their affidavit in reply submitted that as per Rule 32 of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981, procedure has been given as to how the date of promotion is to be determined. The said rule reads as under:-

“32. How the date of promotion is determined.

The promotion of a Govt. servant from a lower to a higher post, his duties remaining the same, takes effect from the date on which the vacancy occurs, unless it is otherwise ordered. But when the promotion involves the assumption of a new post with enlarged responsibilities, the higher pay is admissible only from the date on which the duties of the new post are taken.

7. The learned P.O. submits that since the applicant did not join the promotional post immediately after he was promoted

and since he did not work on the promotional post as per Rule 32 of the M.C.S. (General Conditions of Service) Rules, 1981, the applicant cannot be considered for promotional pay scale from that date.

8. Perusal of the record shows that, it was the Government who issued promotion order of the applicant and the applicant was immediately relieved also from his post so as to join the promotional post, but he was not allowed to join. The applicant had time and again requested the Government that he may be allowed to join or to change his posting order. The order was accordingly modified and thereafter the applicant joined at promotional post. Admittedly, during this period, his junior has already joined the promotional post. In such circumstances, there was absolutely no fault on the part of the applicant and had the applicant been allowed to join immediately, he should have been received salary and all emoluments of promotional post.

9. One of the employee Sheikh Fayyaz Ahmed Aziz Ahmed in similarly situated condition, approached this Tribunal at Aurangabad Bench by filing O.A. No.182/2013 and this Tribunal was pleased to pass the order in the said case on 17.7.2015. A copy of the said judgment is placed on record at page Nos. 54 to 64 (both

inclusive). In para No.8 of the said judgment, it has been observed as under:-

“It seems from the letter dated 26.6.2015 and 25.6.2015 filed by the respondents on record that the applicant’s service period from 14.7.2012 to 14.4.2013 has been held as compulsory waiting period and, therefore, the said period was considered as duty period.”

10. In the present case also, communication dated 14.9.2016 (Page 59), the period from 26.7.2012 to 25.12.2012 has been treated as compulsory waiting period. Facts of the present case seems to be similar to those in O.A. No. 182/2013. The Government has regularized the compulsory waiting period in respect of Shri Sheikh Ahmed in the said O.A. as duty period. The learned counsel for the applicant has placed a copy of order in this regard dated 15.2.2016 which is marked Exh.X for the purpose of identification. There is no difficulty to treat the compulsory waiting period as duty period in respect of the applicant also. Hence, I proceed to pass the following order:-

ORDER

- (i) O.A. is allowed.
- (ii) The communication dated 20.8.2016 (Annexure A-11) issued by respondent No.1 is quashed and set aside.
- (iii) The respondents are directed to regularize the period from 26.7.2012 to 25.12.2012 and to treat as duty period in respect of the applicant and to regularize the pay fixation of the applicant to the post of Joint Registrar w.e.f. 26.7.2012 and to pay the difference to the applicant due to such pay fixation.
- (iv) The order shall be complied with within one month, failing which the applicant may file representation for interest.
- (v) No order as to costs.

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

Dt. 3.1.2019.

Pdg.