

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 783 OF 2013 (S.B.)

Shri Ashok Raghunath Khobragade,
Aged 59 years, Retired Head Constable,
R/o Qtr. No. 87/4, SRP Camp Hingna Road,
Nagpur.

Applicant.

Versus

- 1) State of Maharashtra,
State Reserve Police Force,
Through its Secretary, Department of Home,
Mantralaya, Mumbai-32.
- 2) Director General of Police-Mumbai.
- 3) Inspector General of Police,
SRP Group IV, Hingna Road,
Nagpur.

Respondents

Mrs.V.Khadekar, Id. Advocate for the applicant.

Shri A.M.Ghogre, Id. P.O. for the respondents.

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

JUDGMENT

(Delivered on this 05th day of Decemeber, 2017)

Heard Mrs. V. Khadekar, learned counsel for the applicant and Shri A.M.Ghogre, learned P.O. for the respondents.

2. The applicant has retired as Head Constable (Hawaldar). He was appointed as constable on 14/10/1977 and was promoted as Police Naik in 2003 and thereafter as Hawaldar in 2006. According to the applicant, a seniority list of Hawaldar was published as on 2012 in which the applicant was at serial no. 104. He was very much due for promotion to the post of Assistant Sub Inspector, but he could not produce caste validity certificate. The Head Constable/ Hawaldar who were junior to the applicant and were having seniority no. 122, 150 were promoted as Assistant Sub Inspector. The applicant was however, not promoted. He filed representation on 16/03/2013, but it was not considered at all. The applicant has also produced Caste Validity Certificate on 16/02/2013.

3. The applicant has obtained certain documents under Right to Information Act and from the said documents it was noticed that the respondents have deducted Rs. 1, 62, 000 from his gratuity wrongly. The applicant has, therefore, prayed that he be granted deemed date of promotion to the post of Assistant Sub Inspector from the date on which his juniors were promoted and the order passed by respondent no. 3 issuing pension order **PLAS-1/Pensioner/7275/2012**, Nagpur dated 20/10/2012 deducting the amount of gratuity without any reason, be

quashed and set aside and wrongly deducted amount be refunded to the applicant with interest.

4. The respondent no. 3, Inspector General of Police, files the affidavit-in-reply and tried to justify the order of deduction. It is stated in para no. 4, 5 & 6 which is as under:-

4. It is further submitted that as per G.R. dated 08/06/1995 the time bound promotion will be granted to the government servant after completion of 12 yrs. of continuous service in the department and he will get the higher pay scale as payable to the promotional post and the said G.R. will come into effect since 01.10.1994. The copy of the G.R. is annexed herewith at ANNEXURE-R-3-B. That the said G.R. dated 08/06/1995 further made it clear that the scheme of time bound promotion will be applicable to the government servant who is eligible for promotion in considering his seniority, eligibility criteria, qualifying examination, etc. It means that the government servant who was not eligible for the regular promotion, the said scheme of time bound promotion as per G.R. dated 08/06/1995 will not be applicable to the said government servant.

It is further submitted that the higher higherasy for the post of Assistant Police Sub Inspector is Police Constable – Police Naik – Police Hawaldar - Assistant Police Sub Inspector in S.R.P.F. Department. It is specifically submitted that the DPC meeting held since 1994 to 2002 and thereby hold that the applicant was not found eligible for promotional post. However, in the year 2002 the DPC has held that applicant is eligible for the promotional post of Police Naik. Therefore, vide its order dated 23/01/2003 the applicant was given a higher pay scale of Rs. 4000-100-6000 since 22/01/2003 and he was given the actual post to the post of Police Naik on 22/01/2003. It is further submitted that the DPC held in the year 2005 has again found that applicant was not eligible to the promotional post of police Hawaldar. However, in the year 2006 the DPC has held the applicant as eligible for the promotional post of Police Hawaldar vide its order dated 06/07/2006 and accordingly the applicant was given the promotion on 05/07/2006 to the post of Police Hawaldar. Therefore, the applicant seniority to the post of Police Hawaldar was counted from the date 05/07/2006 for the promotional post of Assistant Police Sub Inspector as per the Circular No. 6/3995/Police Naik-92 of dated 31/12/1992 issued by the Director General Of Police, Mumbai. Therefore, in considering the said Circular the applicant is not eligible for the promotional post of Assistant Police Sub Inspector.

5. It is further submitted that the incumbents in the police department as mentioned in the Para 4.3 of the original application by

name Shri S.S.Dhadse, R.C.Ganvir and C.A. Gharde though were appointed after the date of appointment of the applicant but they have promoted to the post of police hawaldar and later on promoted to the post of Assistant Police Sub Inspector before the applicant. Therefore, they are senior to the applicant in the post of Police Hawaldar and accordingly they were promoted to the post of Assistant Police Sub Inspector by considering the circular dated 31/12/1992.

6. *It is further submitted that the applicant was very first time on dated 22/11/2005 & 29/09/2009 directed to submit their relevant documents in respect of validity of caste certificate and for forwarding the same to the Caste Scrutiny Committee. Inspire of repeated requests the applicant has not submitted their said documents to the department. However, it is important to note here that as per the Circular dated 26/03/2010 it is necessary to obtain the caste validity certificate for promotional post and accordingly the applicant was informed vide letter dated 13/04/2012 to submit the relevant documents as required for forwarding the same to Caste Scrutiny Committee for obtaining the caste validity certificate and accordingly the same were sent to Caste Scrutiny Committee. However, after removal of objections and supply of additional documents the proposal of the applicant was again submitted to the Caste Scrutiny Committee on dated 10/09/2012 by the answering respondent after proper compliance from the part of applicant. Copy of the Circular dated 26/03/2010 is annexed herewith at **ANNEXURE-R-3-C**.*

It is respectfully submitted that the applicant was superannuated and retire from the service on 31/10/2012. However, the caste validity certificate dated 16/03/2003 was received to the applicant after his retirement.

It is respectfully submitted that the applicant has received the cast validity certificate after the date of his retirement. Therefore, the applicant was not eligible for deemed date of promotion to the post Assistant Police Sub Inspector.

5. The respondent no. 2 (Director General of Police) reiterated the defence taken by respondent no. 3 i.e. Inspector General of Police. The Id. P.O. submits that the applicant has not challenged his non promotion to the post of Assistant Sub Inspector prior to his retirement and even in this application. Since the applicant was not promoted as Assistant Sub Inspector, he cannot claim deemed date of promotion to the said post. It is submitted that the applicant was never promoted as

Assistant Sub Inspector till his retirement. He came to be retired on superannuation on 31/10/2012 and prior to his retirement he never challenged the action of the respondents in not promoting him to the post of Assistant Sub Inspector. From the affidavit-in-reply of the respondents, it seems that the applicant's case was considered for promotion, but he was not found fit. The respondents have referred to the various D.P.C. meetings held since 1994 – 2002. It is submitted that from 1994 – 2002, the applicant was not found eligible for promotional post but in the year 2002, he was found eligible for the promotional post of Police – Naik and, therefore, he was given higher pay scale in the said pay scale of Rs. 4000-100-6000 since 22/01/2003. Again in the D.P.C. meeting of 2005, the applicant was found in-eligible for promotional post of Hawaldar but in the year 2006, he was found illegible for the post of Hawaldar vide order dated 06/07/2006 and, therefore, he was promoted as Hawaldar from 05/07/2006. The applicant's seniority to the post of Hawaldar was thus counted from 05/07/2006 and, therefore, he was not illegible for promotional post of Assistant Sub Inspector.

6. The respondents further submitted that the applicant was directed to produce Caste Validity Certificate and the same was necessary for considering the candidate's promotion as per circular dated 26/03/2010. The applicant could not produce the Caste Validity Certificate till his retirement. It is an admitted fact that the applicant had

produced Caste Validity Certificate after retirement. He got retired on 31/10/2012 and has produced the Caste Validity Certificate on 16/02/2013. From the circumstances as stated above, it will be thus crystal clear that the applicant was found not eligible and secondly he could not produce the Caste Validity Certificate. The applicant has not immediately challenged the promotion of his juniors. Accordingly, applicant's seniority in the Head Constable cadre was considered from the date of his promotion as a Head Constable and hence I don't find any illegality in such consideration. There is nothing on the record to show that the junior persons in the seniority list of Head Constables were promoted earlier to the applicant and in any case, the applicant was unable to produce the Caste Validity Certificate. The applicant has not joined his juniors who were wrongly promoted to the post of Assistant Sub Inspector as party respondents in this O.A. nor he has challenged their promotion. Even the applicant has not subsequently challenged the action of not promoting him to the post of Assistant Sub Inspector. In such circumstances he cannot claim deemed date of promotion to the post of Assistant Sub Inspector, since he was never promoted to that post.

7. So far as the respondents' action in deducting the so-called excess amount from gratuity of applicant is concerned, the applicant has placed on record copy of the said order at P.B., Pg. No. 86, from the said

communication dated 04/09/2012, it seems that the applicant's pay scale was wrongly fixed. As per this letter the applicant was due to receive Rs. 62, 140. But in fact, he was paid Rs. 2, 24, 581 and, therefore, an amount of Rs. 1, 62, 441 was wrongly paid to him and the competent authority has directed to recover this amount from his gratuity. Along-with this order, a statement has been produced on record that excess amount was paid to the applicant, the said statement is at P.B., Pg. No. 87 – 98 (both inclusive).

8. The order of pay fixation of the applicant, in view of this decision is at P.B., Pg. No. 73 to 80 (both inclusive) dated 08/08/2012. From the said order, it seems that the applicant's pay scale was revised and this revision pertains to the period 01/10/1981 till the date of his retirement. Thus all of a sudden, the respondents authority have tried to recover the so-called amount from the applicant's gratuity. It is material to note that the applicant is Head Constable, Class III employee and such a huge amount of Rs. 1, 62, 441 is being recovered from his gratuity after retirement. This will definitely cause great hardship to the applicant and such recovery is not at all permissible in view of the direction issued by the Hon'ble Apex Court in the case of **State of Punjab and Ors.etc. V/s Rafiq Masih (White Washer)** as referred (*cited supra*), the Hon'ble Court has observed as under :-

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarize the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group “C” and Group “D” service).***
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.***
- (iii) Recovery from the employees when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.***
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.***
- (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employees, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer’s right to recover.”***

9. The Id. P.O. submits that the applicant has not challenged the order of recovery. It seems that in the prayer clause, the applicant has assailed the order dated 20 Oct. 2012 which is nothing but an order regarding declaration that the applicant will stand retired from particular date. However, in the subsequent prayer clause, the applicant has claimed that his pension order as regards recovery of excess amount from gratuity be declared illegal. The prayer clause might have mentioned the wrong date about the recovery order, but it will not disentitle the applicant for challenging the recovery of so called excess amount.

10. In view of the discussion in forgoing paras, I pass the following order:-

ORDER

1. The application is partly allowed.
2. The applicant's claim for deemed date of promotion to the post of Assistant Sub Inspector, consequential, financial benefits to that effect is rejected. The respondent's action in deducting the amount of Rs. 1,62,441 from the gratuity of the applicant is however, held illegal.
3. The respondents are directed to refund the amount of Rs. 1,62,441 recovered from the applicant's gratuity on the ground that the same was paid in excess. Such amount shall be refunded within **three months** from the date of this order, failing which the applicant will be at liberty to file representation, claiming interest on the said amount.
4. No order as to costs.

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

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