

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.318 OF 2019

DISTRICT : NASHIK

Shri Bhagwan Nivrutti Kharke.)
Age : 49 Yrs, Working as Sr. Lecturer,)
R/o. Amey-Vijay Nagar, Sinnar,)
Tal.: Sinnar, District : Nashik.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
[School Education], School)
Education and Sports Department,)
Mumbai – 400 032.)

2. The Commissioner [Education],)
[M.S.], Pune and having office at)
Bal Bharti, Senapati Bapat Marg,)
Mumbai.)...**Respondents**

Mr. Arvind V. Bandiwadekar, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 17.08.2021

JUDGMENT

1. The Applicant has filed this Original Application for grant of deemed date of promotion in the post of Senior Lecturer w.e.f.24.01.2013 since he was actually promoted on 10.03.2016, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as under :-

The Applicant was appointed on the post of Lecturer (Class-II) in District Education and Training Institute as direct recruitee and accordingly, joined the service on 29.04.2006. In 2013, by virtue of seniority, he was eligible for promotion to the post of Senior Lecturer. However, due to mistake on the part of Department, one Mr. A.V. Parihar was shown senior to him and promotion was given to him on the post of Senior Lecturer by order dated 24.01.2013. The Applicant and Mr. A.V. Parihar both belongs to VJ(A) Category. Having noticed denial of seniority and promotion, the Applicant made representations to the Respondents. On receipt of representations, the Respondent No.2 examined the issue and submitted report dated 23.07.2014 to the Government stating that Mr. A.V. Parihar did not join within the time granted to him and after expiration of time given to him joined belatedly on 09.05.2006 on the post of Lecturer. Whereas, the Applicant joined on 29.04.2006. However, in the seniority list, Mr. A.V. Parihar was shown senior to the Applicant though in fact he has lost the seniority because of non-joining within the prescribed period. He, therefore, recommended to cancel the promotion given to Mr. A.V. Parihar.

3. In view of above, the Respondent No.1 issued Circular on 31.12.2011 thereby refixing the seniority of Mr. A.V. Parihar from Serial Nos.114 to 143-A. Thereafter, the matter was placed before the Departmental Promotion Committee (DPC) which recommended for promotion of Applicant in view of his seniority above Mr. A.V. Parihar. The Respondent No.1, therefore, by order dated 10th March, 2016 demoted Mr. A.V. Parihar and promoted the Applicant who was at Serial No.141 in seniority list as an ad-hoc promotion. The Applicant, accordingly, joined on the promotional post on 19.03.2016. Thereafter, he made representations dated 28.03.2016 and 31.03.2017 for grant of deemed date of promotion from 24.01.2013 *inter-alia* contending that he was unnecessarily deprived of the promotion due to sheer mistake of the

Department in showing Mr. A.V. Parihar senior to him. However, the Respondents did not respond. Ultimately, the Applicant has approached this Tribunal by filing the present O.A. claiming deemed date of promotion w.e.f.24.01.2013 with all consequential service benefits.

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant vehemently urged that admittedly, the Applicant was eligible for promotion in 2013 when Mr. A.V. Parihar and 53 other Lecturers were promoted by the Government vide order dated 24.01.2013, but Applicant was not considered due to wrong seniority shown to Mr. A.V. Parihar. He has further pointed out that later on the representation made by the Applicant, the Respondents realized the mistake and corrected the seniority of Mr. A.V. Parihar from 114 to 143-A and consequently, having found that Mr. A.V. Parihar was not eligible for promotion, he was later demoted and Applicant was given promotion belatedly on 10.03.2016. He, therefore, submits that Applicant has been deprived of the promotion and other service benefits to which he was entitled to from 24.01.2013 itself. On this line of submission, he prayed for grant of deemed date w.e.f.24.01.2013 with all consequential service benefits.

5. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer in reference to Affidavit-in-reply filed by Respondents submits that by order dated 24.01.2013, Mr. A.V. Parihar and 53 other Lecturers were promoted as an ad-hoc promotion subject to certain conditions mentioned therein and it being not regular promotion order, the Applicant cannot claim deemed date of promotion from 24.01.2013 even if he was found eligible for promotion in 2013. She has further pointed out that having found that promotion was wrongly given to Mr. A.V. Parihar, he was demoted and Applicant came to be promoted by order dated 10.03.2016 as an ad-hoc promotion, subject to conditions mentioned therein. According to her, the Applicant has not passed departmental examination which was one of the eligibility criteria for grant of promotion and in absence of it, he cannot claim deemed date of

promotion from 24.01.2013. Thus, according to her, promotion granted to the Applicant itself being ad-hoc as well as promotion which was granted to Mr. A.V. Parihar and 53 others by order dated 24.01.2013 is being ad-hoc promotion, the Applicant cannot claim deemed date of promotion. She meant to say, unless there is regular promotion, the employee cannot ask for deemed date of promotion. She has further submitted that in view of Principal (Group 'A'), Senior Lecturer (Group 'A') and Lecturer (Group 'B') in the Maharashtra Education Service (Education Empowerment Branch) Departmental Examination Rules, 2018, the persons appointed on the commencement of these Rules were required to pass departmental examinations during two years in terms of Rule 3 of the said Rules (hereinafter referred to as "Departmental Examination Rules, 2018" for brevity). In these line of submission, she submits that the claim for deemed date of promotion raised by the Applicant is unsustainable in law.

6. In view of submissions advanced at the Bar, the question posed for consideration is whether the Applicant was eligible when Mr. A.V. Parihar and 53 other Lecturers were promoted to the post of Senior Lecturer on 24.01.2013 and now entitled to deemed date of promotion on the post of Senior Lecturer from 24.01.2013.

7. Indisputably, the Applicant and Mr. A.V. Parihar both were selected in same batch. The Applicant joined on 29.04.2006. However, Mr. A.V. Parihar did not join within time granted to him for joining. He joined belatedly on 09.05.2006 and lost seniority in view of Rule 4(2) of The Maharashtra Civil Services (Regulation of Seniority) Rules 1982. However, mistakenly in seniority list, Mr. A.V. Parihar was given seniority as if he joined within prescribed time limit and accordingly, placed at Serial No.114 from VJ(A) Category. Admittedly, Applicant also belongs to VJ(A) Category. The mistake was brought to the notice of Department by the Applicant by making representations. Accordingly, mistake was rectified by the Department having found that seniority shown to Mr.

A.V. Parihar in seniority list was wrong. Consequently, he was demoted and placed at Serial No.143-A in the seniority list from seniority No.114. As such, there is no denying that Mr. A.V. Parihar was not eligible for promotion and in fact, the Applicant was eligible being the candidate from VJ(A) Category in place of Mr. A.V. Parihar. However, Applicant's name was not at all considered in view of sheer mistake of the Department and in his place, the name of Mr. A.V. Parihar was considered wrongly and he was given ad-hoc promotion by order dated 24.01.2013. Indisputably, the Government by order dated 10.03.2016 demoted Mr. A.V. Parihar and promoted the Applicant to the post of Senior Lecturer as an ad-hoc promotion by order dated 10.03.2016. Material to note that, it is nowhere the case of Respondents that Applicant was not eligible for promotion on 24.01.2013. This is very crucial aspect of the matter.

8. True, the Government has cancelled promotion given to Mr. A.V. Parihar, but that itself would not be enough to redress the grievance of the Applicant. It is abundantly clear an undisputed position that the Applicant was eligible for promotion when Mr. A.V. Parihar and 53 other Lecturers were promoted to the post of Senior Lecturer. However, Mr. A.V. Parihar was promoted on the basis of wrong seniority though in fact Applicant's name ought to have been considered that time instead of Mr. A.V. Parihar. In other words, the Applicant was wrongly kept out of consideration because of sheer mistake of the Department in showing wrong seniority to Mr. A.V. Parihar. This is not a case where Applicant is claiming deemed date on the ground that person junior to him was promoted. Indeed, this is a case where his name was kept out of consideration and in his place, the name of Shri A.V. Parihar was considered to which he was not entitled.

9. True, an employee has no vested right of promotion but he has right of consideration for the promotional post, subject to eligibility and in absence of justifiable reason he deserves to be promoted, if no fault

can be attributed to him. Needless to mention, the right of eligible employee to be considered for promotion is virtually a facet of their fundamental right guaranteed under Article 16 of the Constitution. Guarantee of their consideration in the matter of promotion under Article 16 flows from guarantee of equality under Article 14 of the Constitution. The Government must act as a model employer fairly consistent with its role in welfare state. Suffice to say, if a Government servant is not promoted accordingly to his rank to which he is entitled owing to sheer mistake of department and he is kept out of promotional post though eligible and willing to work on promotional post, he deserves to be given deemed date of promotion.

10. Now, turning to the issue of ad-hoc promotion, material to note that by order dated 24.01.2013, all 54 Lecturers were promoted as Senior Lecturer by way of ad-hoc promotion for 11 months. Similarly, by order dated 10.03.2016, the Applicant is also shown promoted as an ad-hoc promotion for 11 months. During the course of hearing, specific and pointed query was made to the learned P.O. as to why Government choose to promote them as an ad-hoc promotion and to know whether Government has taken any steps to convert ad-hoc promotion into regular promotion or otherwise after the issuance of order of ad-hoc promotion dated 24.01.2013. However, no satisfactory explanation could be given. All that, it is stated that as per the practice, ad-hoc promotions are being given. Be that as it may, admittedly, all these employees promoted by way of ad-hoc promotion by order dated 24.01.2013 are continued in the promotional post and enjoying consequential service benefits of the promotional post. The Applicant is also claiming same benefits by claiming deemed date of promotion w.e.f. 24.01.2013 on similar line of ad-hoc promotion. As such, only because the orders are in the form of ad-hoc promotion, the Applicant's claim for deemed date of promotion cannot be foreclosed. Since Applicant was eligible and in the zone of consideration for ad-hoc promotion on 24.01.2013, I see

absolutely no reason to deny him deemed date of ad-hoc promotion w.e.f.24.01.2013 on similar line.

11. Now, turning to the objection on the point of non-passing of departmental examination by the Applicant, in the first place, by order dated 24.01.2013, Shri Parihar and 53 other Lecturers were promoted as Senior Lecturer on ad-hoc basis and they were required to pass departmental examination. The Applicant is also claiming same relief though indeed he has already passed departmental examinations. The Respondents have not placed on record any material to show what steps they did take in respect of non-passing of departmental examination by those 54 Lecturers who were promoted by order dated 24.01.2013.

12. Be that as it may, pertinent to note that Applicant was appointed on 29.04.2006. At the relevant time, Rules in place about departmental examination were the Principal (Group 'A'), Senior Lecturer (Group 'A'), Lecturer (Group 'B'), District Institute of Education and Training in Maharashtra Education Service (Teacher Training Branch) Recruitment Rules, 1999. As per Rule 10 of these Rules, a person promoted was required to pass departmental examination according to Rule made in this behalf unless he has already passed or has been exempted from passing those examinations. Notably, the Applicant had already passed departmental examinations conducted by MPSC in the year 2010 as seen from result declared by MPSC on 20.01.2011 (Page Nos.119 to 121 of P.B.). As such, since Applicant had already passed departmental examination in terms of "Rules of 1999", he was not required to appear and pass again the said departmental examination after the enforcement of 'Rule of 2018'. It appears that in 2018, fresh Rules were framed called "Departmental Examinations Rules, 2018" as notified in the Notification dated 26.02.2018. In these Rules, there is already reference of 'Department Recruitment Rules of 1999'. As per Rule 3(iii) of 'Rules of 2018', a person who has already passed the departmental examination conducted in accordance to Rules prevailing at that time shall be

exempted from passing the examinations for the said post. This being the position, the submission advanced by the learned Presenting Officer that Applicant was required to pass departmental examination afresh after the enforcement of 'Rules of 2018' is misconceived.

13. Further, it may be noted that under old Rules i.e. 'Rules of 1999', there was no such specific stipulation of the time period within which departmental examination was required to be passed. Indeed, it was made applicable to the training branch to which Applicant belongs in terms of G.R. dated 31.07.2008. It is in that context, the Applicant appeared in the departmental examination conducted by MPSC and cleared the examination in 2010. Suffice to say, the deemed date of promotion to the post cannot be denied on the ground that Applicant has not passed departmental examination afresh after enforcement of 'Rules of 2018' since he has already passed the examination under old 'Rules of 1999' and there was no requirement to pass examination afresh as specifically provided under Rule 10 of 'Rules of 2018'.

14. As such, it is abundantly clear that Applicant was deprived of promotional post when Mr. Parihar and 53 others were promoted by order dated 24.01.2013 due to sheer mistake on the part of department in not maintaining seniority correctly. The Applicant's claim, therefore, for deemed date of promotion has to be accepted with all consequential service benefits.

15. At this juncture, it would be apposite to refer certain decisions about consequential service benefits holding the field, which are as under:-

- (i) ***AIR 2015 SC 2904 (Ramesh Kumar Vs. Union of India)*** wherein the Hon'ble Supreme Court held that in normal circumstances when retrospective promotions are effected, the benefit flowing therefrom including monetary benefits

must be extended to an employee who has been denied promotion earlier and the principle 'no work no pay' cannot be accepted as a rule of thumb and matter needs to be considered on case to case basis. In Para No.13, the Hon'ble Supreme Court held as follows :

“13. We are conscious that even in the absence of statutory provision, normal rule is “no work no pay”. In appropriate cases, a court of law may take into account all the facts in their entirety and pass an appropriate order in consonance with law. The principle of “no work no pay” would not be attracted where the respondents were in fault in not considering the case of the appellant for promotion and not allowing the appellant to work on a post of Naib Subedar carrying higher pay scale. In the facts of the present case when the appellant was granted promotion w.e.f. 01.01.2000 with the ante-dated seniority from 01.08.1997 and maintaining his seniority alongwith his batchmates, it would be unjust to deny him higher pay and allowances in the promotional position of Naib Subedar.”

In this case, the Hon'ble Supreme Court also referred to its earlier decision in **AIR 2007 SC 2645 (State of Kerala Vs. E.K. Bhaskaran Pillai)** wherein it was held that the principle of 'no work no pay' cannot be accepted as a rule of thumb and the matter will have to be considered on case to case basis. In **Bhaskaran Pillai's** case, the Hon'ble Supreme Court in Para No.4 held as follows :-

“4. We have considered the decisions cited on behalf of both the sides. So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before court or tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the court may grant sometimes full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard-and-fast rule. The principle “no work no

pay” cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also.”

(ii) **(2016) 16 SCC 663 (Shobha Ram Raturi Vs. Haryana Vidyut Prasaran Nigam Limited).** In that matter, the order of retirement was challenged. The Hon’ble Punjab and Haryana High Court set aside the retirement order. However, the monetary benefits were refused on the principle of ‘no work no pay’. However, when the matter was taken up before Hon’ble Supreme Court, the monetary benefits/back-wages were granted on the ground that the principle of ‘no work no pay’ cannot be applied where fault lies with the Respondents in not having utilized the services of the Appellants for the period from 01.01.2003 to 31.12.2005. In Para No.3, the Hon’ble Supreme Court held as follows :-

“3. Having given our thoughtful consideration to the controversy, we are satisfied, that after the impugned order of retirement dated 31.12.2002 was set aside, the appellant was entitled to all consequential benefits. The fault lies with the respondents in not having utilised the services of the appellant for the period from 1.1.2003 to 31.12.2005. Had the appellant been allowed to continue in service, he would have readily discharged his duties. Having restrained him from rendering his services with effect from 1.1.2003 to 31.12.2005, the respondent cannot be allowed to press the self-serving plea of denying him wages for the period in question, on the plea of the principle of “no work no pay”.

(iii) **(1991) 4 SCC 109 (Union of India and Ors. Vs. K.V. Jankiraman).** Para No.25 of the Judgment is relied upon, which is as follows :

“25. We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of “no work no pay” is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases.”

- (iv) Judgment of Hon'ble Bombay High Court in **Writ Petition No.6794/2018 (State of Maharashtra Vs. Smt. Manda Deshmukh) decided on 14th September, 2018**. This Writ Petition was filed challenging the Judgment passed by this Tribunal in O.A.1010/2016 decided on 06.04.2017. In this O.A, the monetary benefits were refused relying upon Rule 32 of 'Rules 1981'. The Tribunal referred to the decisions in **Jankiraman's** case and **Ramesh Kumar's** case (cited supra) and held that the principle 'no work no pay' will not apply where an employee was illegally deprived of the opportunity to work upon such a post. The decision rendered by this Tribunal has been confirmed by Hon'ble High Court in Writ Petition No.6794/2018 with modification to the extent of interest.

16. The necessary corollary of aforesaid discussion leads me to sum-up that the Applicant is entitled to deemed date of promotion in the post of Senior Lecturer w.e.f.24.01.2013 on similar line of promotions granted to others by order dated 24.01.2013 and is entitled to all consequential service benefits including pay and allowances w.e.f. 24.01.2013. The O.A, therefore, deserves to be allowed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The Applicant is held entitled to deemed date of promotion in the post of Senior Lecturer w.e.f. 24.01.2013 on similar line of promotions granted to others by order dated 24.01.2013.
- (C) The Applicant is also entitled to consequential service benefits including pay and allowances from 24.01.2013 and necessary arrears be paid to him within three months from today.

(D) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai

Date : 17.08.2021

Dictation taken by :

S.K. Wamanse.

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