

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NOS.886, 887, 888 & 967 OF 2015

DISTRICT : PUNE

ORIGINAL APPLICATION NO.886 OF 2015

Mrs. Anita S. Thite,)
R/at. Lake Town Society, Buil.no.B-8,)
Plot No.404, Katraj, Pune 411 046.)...Applicant

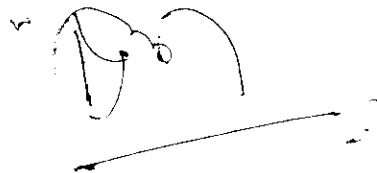
Versus

1. The Secretary, Industry & Energy Dept.)
Maharashtra State, Mantralaya,)
Mumbai - 400 032.)
2. The Commissioner of Labour, Bandra)
Kurla Complex, Bandra, Mumbai.)
3. The Additional Commissioner of Labour,)
Mumbai-Pune Road, Bungalow No.5,)
Shivajinagar, Pune 411 005.)
4. The Deputy Commissioner of Labour,)
Mumbai-Pune Road, Bungalow No.5.)
Shivajinagar, Pune 411 005.)..Respondents

ORIGINAL APPLICATION NO.887 OF 2015

Mrs. Aparna A. Kanade,)
R/at. The Avenue Apartment 107/30)
Erandvane, Opp. Kalmadi School,)
Pune 411 004.)...Applicant

Versus



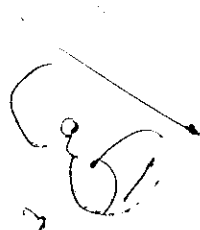
1. The Secretary, Industry & Energy Dept.)
Maharashtra State, Mantralaya,)
Mumbai - 400 032.)
2. The Commissioner of Labour, Bandra)
Kurla Complex, Bandra, Mumbai.)
3. The Additional Commissioner of Labour,)
Mumbai-Pune Road, Bungalow No.5,)
Shivajinagar, Pune 411 005.)...Respondents

ORIGINAL APPLICATION NO.888 OF 2015

Mrs. Shobha D.Hole,)
R/at. 232, Kasba Peth, near Shaniwar Wada,)
Pune 411 011.)...Applicant

Versus

1. The Secretary, Industry & Energy Dept.)
Maharashtra State, Mantralaya,)
Mumbai - 400 032.)
2. The Commissioner of Labour, Bandra)
Kurla Complex, Bandra, Mumbai.)
3. The Additional Commissioner of Labour,)
Mumbai-Pune Road, Bungalow No.5,)
Shivajinagar, Pune 411 005.)
4. The Deputy Commissioner of Labour,)
Mumbai-Pune Road, Bungalow No.5.)
Shivajinagar, Pune 411 005.)...Respondents



ORIGINAL APPLICATION NO.967 OF 2015

Mrs. Ujwala S. Modak)
R/at.50B/51, Erandvana Gavthan,)
Soba Mansion, 4th floor, A.B. Khilare Road,)
Pune 411 004.)...Applicant

Versus

1. The Secretary, Industry & Energy Dept.)
Maharashtra State, Mantralaya,)
Mumbai – 400 032.)
2. The Commissioner of Labour, Bandra)
Kurla Complex, Bandra, Mumbai.)
3. The Additional Commissioner of Labour,)
Mumbai-Pune Road, Bungalow No.5,)
Shivajinagar, Pune 411 005.)
4. The Deputy Commissioner of Labour,)
Mumbai-Pune Road, Bungalow No.5.)
Shivajinagar, Pune 411 005.)..Respondents

Shri V.V. Joshi, Advocate for Applicants.

Ms N.G. Gohad, Presenting Officer for Respondents.

CORAM : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 23.2.2016

ORDER

1. The issue as to whether the so called refusal to accept temporary promotion could adversely affect the said



employees in the matter of regular promotion or financial benefits is fully concluded by a judgment of the Hon'ble Supreme Court in **N.S. Naga V/s. Union of India 1995 (Supp.3) SCC 143** which was followed by this Tribunal in **O.A.No.468/2008 (Balasaheb M. Wagh & one another V/s. Commissioner of Labour, Maharashtra State, Mumbai), dated 21.08.2009.** The facts in all these four Original Applications being exactly identical in so far as the application of the principles is concerned, all of them are being decided by this common judgment.

2. I have perused the record and proceedings and heard Shri V.V. Joshi, the learned Advocate for the applicants and Ms N.G. Gohad, the learned Presenting Officer for the respondents.

3. The applicant in O.A.No.886/2015 came to be appointed as Clerk-cum-Typist on 14.8.1984. From 11.9.1987, she continued working in substantive capacity. A G.R. came to be issued on 08.06.1995 to provide to the employees who were eligible to be promoted but could be given functional promotion and financial benefits the higher pay scale after 12 years of service. (2nd one after 24 years as per 2010 G.R.). All the applicants herein were working in such a capacity as to be entitled to the benediction thereof. The applicant in O.A.No.887/2015 joined as Clerk-cum-



Typist at Pune on 08.06.1983 and she continued to function in substantive capacity from 11.09.1987. In O.A.No.888/2015, the applicant joined as Clerk-cum-Typist on 14.08.1984 and she also was functioning on substantive capacity from 11.09.1987.

4. By the G.R. above referred to as already alluded to even those who were not given actual functional promotion too became entitled to get scale of pay for the higher post after completion of 12 years of service. The revised pay scale in case of these applicants came to be made in due course. Time bound promotion was given to them.

5. In case of all the applicants, orders came to be issued on various dates admittedly for temporary promotion. All the applicants admittedly did not accept them and expressed regrets generally citing family circumstances. But the fact remains that their refusal was to accept temporary promotion.

6. It appears that such a refusal on the part of the applicants led to cancellation of benefits effected from the dates indicated in the orders under challenge in these O.A.s. As a representative order, I may in that connection refer to what is annexure A1, page 9 in the O.A. No.886/2015. The recoveries also were ordered and made. The representations



having been made unsuccessfully, these actions were initiated before this Tribunal. The impugned orders were made and actions taken without giving them an opportunity of being heard. In the above context, the applicants hereby seek some kind of declarations of their entitlement for deemed date of promotion till they were actually regularly promoted which promotions they accepted. They also seek entitlement to second A.C.P. vide G.R. dated 1.4.2010 on completion of 24 years of service. They pray that the impugned orders be quashed and set aside and consequential relief in various ways, be granted to them.

7. The respondents have, by a common affidavit filed by Shri R.R. Hendre, Additional Commissioner have disputed the claim of the applicants and supported the action taken in the matter. Arguments in the same line were advanced at the bar.

8. Perusal of the order of this Tribunal in O.A. No.468/2008 would show that there also the applicant had refused temporary promotion. Though he belonged to another departments but the basic and crucial facts were the same. This Tribunal construed the Marathi words in page 7 of its order (Page 36 of the paper-book) and held categorically that unless the refusal was to regular promotion no adverse consequence could be visited upon the concerned employee.



For that reliance was placed on the case of **N.S. Naga** (Supra). As mentioned above, there is absolutely no difference in the principles that governed the fasciculus of these O.A.s and O.A.No.468/2008. Here also as mandated by N.S.Naga's case (Supra), the same course of action would have to be adopted.

9. The applicants have made a number of prayers. In my opinion in the final order, it will have to be made clear that the orders herein impugned would be quashed and set aside and all the consequential relief will have to be given to the applicants within the time to be specified herein. It is undoubtedly true that all the applicants having retired they would be entitled to the benefits being followed in all relevant segments of their post retiral benefits. The delay was condoned by the orders on the M.A.s.

10. This is in so far as the facts in the light of the earlier order on the O.A. are concerned, but in so far as the recovery aspect of the matter is concerned once it is found that no adverse consequences could be visited upon the applicants for their refusal to accept temporary promotion, there will be no question of any recovery being made from them. In that regard reference to an order of this Tribunal presided over by a learned Member (J) in **O.A.No.1068/2014 in case of Mr. Deepak K. Ambre V/s. State of Maharashtra and 2 others,**

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dated 24.7.2015 is apposite. In paragraph 8 thereof, reliance is placed on the judgment of the **Hon'ble Supreme Court in State of Punjab V/s. Rafik 2015 (4) SCC 334**. There can, therefore, be no question of any recovery being made from the applicants.

11. The orders herein impugned are quashed and set aside. The respondents are directed to rework out the entitlement of the applicants on the basis as if the impugned orders were never made and determine the said entitlements in every respect as herein above indicated and in accordance with the prayer clauses 'a to d'. In these Original Applications the full compliance to commence forthwith and accruing financial benefits be given to each one of these applicants within three months from today. These Original Applications are accordingly allowed in these terms with no order as to costs.



(R.B. Malik)
Member-J
23.02.2016

23.02.16

Place : Mumbai
Date : 23.2.2016