

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 301 OF 2016

DISTRICT : - NANDURBAR.

Nagesh Gangadhar Patil,

Age: 44 years, Occu. Service,

R/o. Deputy Regional Transport Office,

Nandurbar, Tq. Nandurbar,

Dist. Nandurbar.

.. APPLICANT.

V E R S U S

1. The State of Maharashtra,

Through Secretary Transport

Department, Mantralaya, Mumbai.

(Copy to be served with the C.P.O.

MAT Mumbai Bench at Aurangabad).

2. The Transport Commissioner,

Administrative Building, 3rd and

4th Floor, Near Chetana College,

Government Servant Colony,

Bandara (E), Mumbai-51.

3. The Regional Transport Officer,

Regional Transport Office (Dhule

Region), Mumbai Agra Road,

Near Gurudwara, Dhule.

4. The Deputy Regional Transport Officer,

Deputy Regional Transport Office,

Sakri Road, Nandurbar.

.. RESPONDENTS.

APPEARANCE : Shri A.I. Deshmukh, learned
Advocate for the Applicant.
: Shri S.K. Shirase – learned
Presenting Officer for the
respondents.

**CORAM : HON'BLE SHRI B.P. PATIL,
MEMBER (J)**

DATE : 21ST APRIL, 2017.

ORDER

1. By filing the present Original Application, the applicant has sought directions to the respondents to implement the Scheme of Assured Progression Scheme (आश्वासित प्रगती योजना), as per Government Resolutions dated 01.04.2010 and 20.07.2001 and extend the benefits of the said scheme to him.

2. The applicant was selected as Junior Clerk by the Maharashtra Public Service Commission (for short "the Commission") on 07.03.1996 and thereafter appointed in the office of Transport Commissioner at Mumbai by appointment letter dated 20.07.1996. In the year 1999,

he was suspended due to criminal prosecution. In the year 2001 he was acquitted and therefore, his suspension was revoked on 11.06.2002 and his service was regularized on 11.06.2002 and since then he continued in service. Thereafter, he had passed departmental examination in the year 2002. Thereafter, he was transferred from Transport Commissioner Office, Mumbai to Regional Transport Office, Nasik on the post of Clerk (Typist) on 21.06.2003 and thereafter again he was transferred to Deputy Regional Transport Office, Jalgaon, on the same post on 30.07.2003. On 12.10.2012 the Caste Certificate of the applicant was submitted to Caste Scrutiny Committee, Nandurbar division through the office i.e. Deputy Regional Transport Office, Jalgaon for scrutiny and verification.

3. Thereafter, he was transferred from Deputy Regional Transport Office, Jalgaon to Deputy Regional Transport Office, Nandurbar by order dated 31.05.2013. Meanwhile meeting for the promotion and Assured Progression Scheme was held on 26.11.2008. List of the eligible

employees was declared on 06.12.2008 and the applicant was declared eligible as the beneficiary under the said scheme along with six other employees. Name of those eligible employees including the applicant were forwarded to the respondent No. 2 to implement the said scheme, but except name of the applicant the benefits were extended to the other employees, who were junior to him. Again on 08.10.2015, the respondent No. 2 extended the benefit of the said scheme to the other employees, but name of the applicant was not included. It is contended that the applicant has completed service of 12 years and he is eligible for getting the benefit of the said scheme. He approached to the respondents time and again, but benefit of the said scheme was not extended to him. Therefore, the applicant has filed the present Original Application and sought direction of this Tribunal in that regard.

4. The respondents have resisted the claim of the applicant by filing affidavit in reply. They have contended that the applicant entered in the service on the post of Clerk-cum-Typist against the reserved post meant for

Scheduled Tribes on the basis of caste certificate. While appointing the applicant it was made clear that his appointment is made subject to examination of the verification of caste validity by Caste Scrutiny Committee, as mentioned in appointment letter dated 20.7.1996, but the applicant has not submitted Caste Validity Certificate and, therefore, benefit of promotional avenue has not been extended to him. They have admitted that the Caste Certificate of the applicant was forwarded to the Nandurbar Division for the purpose of Caste Scrutiny and Verification. It is their contention that it is a condition precedent to produce Caste Validity Certificate for extending the benefit under the Scheme. They have admitted that the name of the applicant was included and the proposal was sent to the respondent No. 2 for extending the benefit of the scheme, but the applicant has failed to submit Caste Validity Certificate, which is a condition precedent for availing the benefit of Assured Progression Scheme in view of the Government Resolution dated 1.7.2011. In view of the Government Resolution dated 1.7.2011 the benefit of Assured Progression Scheme

denied to the applicant. There is no illegality in the said decision. Therefore, they have urged that the present Original Application may be dismissed.

5. I have heard the arguments advanced by Shri A.I. Deshmukh – learned Advocate for the applicant and Shri S.K. Shirase – learned Presenting Officer for the respondents. I have perused the application, affidavit, affidavit in reply. I have also perused the documents placed on record by both the sides.

6. Learned Advocate for the applicant has submitted that the applicant is belonging to Scheduled Tribe. He has produced the Caste Certificate before the department. The said certificate was forwarded to the Caste Scrutiny Committee Nandurbar Division for the purpose of Verification of the said certificate by office letter dated 12.10.2012. He has submitted that the applicant has completed more than 20 years of service. Therefore, he is eligible for extending the benefit of Assured Progression Scheme on completion of 12 years of service.

7. Learned Advocate for the applicant has further submitted that the junior employees to the applicant have received the benefit of the said scheme, but the applicant had not received the benefit only on the ground that he is not made permanent in service and he has not produced a Caste Scrutiny Certificate. He has submitted that the certificate was forwarded to the Caste Scrutiny Committee for verification purpose and it is for the Committee to verify it and to issue certificate accordingly. He has submitted that large number of matters are pending before the Caste Scrutiny Committee and there is delay on the part of the Scrutiny Committee in verifying the certificate of the applicant. He has submitted that there was no lapse on the part of the applicant and, therefore, he cannot be denied the benefit of the scheme on that ground. He has submitted that the applicant cannot be asked to produce Caste Verification Certificate, which is impossible for him, as it is duty of the Caste Scrutiny Committee. He has submitted that condition No. 7 contained in Government Resolution dated 5.11.2009, which provides that there will be no promotion in case of

the candidate belonging to the backward class unless he possesses the validity certificate, has been struck off by the Hon'ble High Court Bench at Aurangabad in Writ Petition No. 2136/2011 decided on 25.08.2011. Therefore, on the ground that of non-production of Caste Verification Certificate, the benefit of the Assured Career Progression Scheme cannot be denied to the applicant.

8. He has further submitted that the similar issue has been involved in O.A. No. 767/2013 [Shri Bhagwan Daulat Sonwane Vs. the State of Maharashtra and others] decided by the Division Bench of this Tribunal Bench at Aurangabad on 31st March, 2015. He has produced the copy of the said decision. He has submitted that in view of the aforesaid decision, it is just and proper to direct the respondents to extend the benefit of Assured Career Progression Scheme to the applicant.

9. Learned Presenting Officer has submitted that the respondents have denied the benefit of Assured Progression Scheme to the applicant in view of the Government Resolution dated 1.7.2011. He has drawn my

attention to the explanation No. 13 attached to the said Government Resolution. He has submitted that the respondents has rightly rejected the claim of the applicant in view of the said Government Resolution dated 1.7.2011 and, therefore, there is no illegality on the part of respondents in denying the benefits of the scheme to the applicant.

10. I have gone through the documents placed on record by the parties. The respondents have denied to extend the benefit of Assured Career Progression Scheme to the applicant only on the ground that he has not produced Caste Validity Certificated issued by the Scrutiny Committee. The respondents are relying on the Government Resolution dated 1.7.2011. As against this, the applicant has relied on the decision of the Hon'ble High Court in the case of **SHRIKANT S/O. CHANDRAKANT SAINDANE & OTHERS VS. THE STATE OF MAHARASHTRA & OTHERS [WRIT PETITION NO. 2136/2011] decided on 25.08.2011**, wherein the condition No. 17 contained in the Government Resolution

dated 5.11.2009 has been struck off. Relying on the said decision the Division Bench of this Tribunal Bench at Aurangabad has decided the O.A. No. 767/2011 on 31st March, 2015, wherein reliance on the aforesaid judgment of the Hon'ble High Court, as well as, O.A. No. 644/2009 decided by this Tribunal Bench at Aurangabad on 29.9.2011 has been placed and it has been held that time bound promotion could not have been denied to the applicants in those matters for the reason that their Caste Scrutiny is pending before the Caste Scrutiny Committee. The case of the applicant is similar to the case of the applicants in O.A. No. 767/2013 and 640/2009 decided by this Tribunal. This case is squarely covered under the principles laid down in the aforesaid cited decisions. The Government employee is entitled for the time bound promotion on complying the conditions mentioned in the Government Resolution and his claim cannot be denied only for the reasons that his caste validity certificate is pending before the Caste Scrutiny Committee. Therefore, in my view, it is just and proper to direct the respondents to grant the time bound promotion to the applicant

pending verification of his caste claim. Therefore, this Original Application deserves to be allowed. Consequently, the Original Application is allowed with the direction to the respondents to grant benefit of time bound promotion under Assured Career Progression Scheme as per the rules pending verification of applicant's caste claim. There shall be no order as to costs.

MEMBER (J)

O.A.NO.301-2016(hdd)-2017(SB)