

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 275 of 2012 (DB)

Syed Ziauddin Ahmed S/o Syed Gulam Jilani,
Age – Occ. Retired Manager,
R/o Plot No.15, Quadri Enclave,
Near Ahbab Colony, Police Line Takli,
Nagpur-440 013.

Applicant.

Versus

- 1) State of Maharashtra through
Ministry of Industries, Mantralaya,
Mumbai-440 032.
- 2) District Industries Centre, Udyog
Bhawan, through General Manager,
Civil Lines, Nagpur.

Respondents.

S/Shri N.R. Saboo, Mrs. K.N. Saboo, Advs. for the applicant.

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

**Coram :- Shri Shree Bhagwan,
Vice-Chairman and
Shri Anand Karanjkar, Member (J).**

Date of Reserving for Judgment : 2nd August, 2019.

Date of Pronouncement of Judgment : 5th August, 2019.

JUDGMENT

Per : Anand Karanjkar : Member (J).

(Delivered on this 5th day of August,2019)

Heard Shri N.R. Saboo, learned counsel for the applicant and Shri A.M. Ghogre, learned P.O. for the respondents.

2. In this application the applicant is challenging the order dated 17/11/2008 passed by the General Manager, District Industries Centre, Nagpur. It is submitted that first order was passed on 31/7/2008, as per the direction issued by the Industrial Court, Nagpur in ULP Complaint No.672/1991 and confirmed by the Hon'ble High Court in Writ Petition No.1681/1996 decided on 5/2/2008.

3. The order is mainly attacked on the ground that the impugned order dated 17/11/2008 was passed without giving opportunity of hearing to the applicant and the order is in violation of the judicial verdicts. It is submitted that the action of the respondents is apparently illegal and it be set aside.

4. It is contention of the learned P.O. that the order dated 31/7/2008 was passed by the Authority who was not competent to pass such order. It is also submitted that the applicant was not considered for the promotion in the year 1983 in view of the adverse remarks against the applicant. It is further submitted that the order dated 31/7/2008 was null and void and consequently the Competent Authority passed the order at Annex-R-3, dated 17/11/2008. It is submitted that there is no substance in this O.A. and therefore liable to be dismissed with costs.

5. We have heard the respective submissions on behalf of the applicant and the respondents. It is case of the applicant that as his juniors were promoted in 1983 and they were given the Selection Grade with retrospective effect, therefore, ULP Complaint No.672/1991 was filed by him in the Industrial Court. The complaint was allowed and direction was given by the Industrial Court to place the applicant above the respondent nos.4 to 21 in the list of the promotion dated 22/4/1983 with retrospective effect from 29/7/1982 as Industries Inspector, Selection Grade and give him all attending benefits accruing there from. This order was challenged by the respondents in Writ Petition No. 1681/1996. This Petition came to be dismissed vide order dated 5/2/2008.

6. In para-3 the Hon'ble High Court has observed that "by this communication the respondent no.1 was informed that he will be given benefit of order dated 7/12/1995 passed by the Industrial Court in Complaint No.672/1991 till 28/2/2005 if the respondent no.1 withdraws the application no.57/1996 preferred by him before the Labour Court at Wardha under Section 48 of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act. The respondent no.1 acting on this communication, withdrawn the aforesaid application no.57/1996 on 27/1/2005." While dismissing the Writ Petition specific direction was given by the Hon'ble High Court to the respondents to implement the impugned

order dated 7/12/1995 within a period of six weeks from the receipt of the order. It is pertinent to note that as per this order the General Manager, District Industries Centre, Nagpur passed order on 31/7/2008 and thereby fixed the pay of the applicant giving him deemed date in the cadre of Industries Inspector, Selection Grade w.e.f. 29/7/1982 and in the cadre of Manager w.e.f. 26/6/1991.

7. It is submission of the respondents that the Officer who fixed the pay of the applicant vide order dated 31/7/2008 was not competent to do so, consequently, second order dated 17/11/2008 was passed by the Competent Authority. On perusal of the order dated 17/11/2008 at Annex-R-3, it appears that while giving the deemed date on the post of Manager, the effect was given from 26/7/1995.

8. The learned P.O. was unable to point out that opportunity of hearing was given to the applicant before passing subsequent order dated 17/11/2008. On perusal of the order Annex-A-1 which is modified order, it appears that this order was passed by the General Manager, District Industries Centre, Nagpur, whereas, the first order dated 31/7/2008 was also passed by the General Manager, District Industries Centre, Nagpur. In view of both the orders, it seems that both the orders were passed by the same Authority.

9. After going through the reply submitted by the respondents nos. 1 and 2, it seems that contention was raised that the applicant was not eligible for the promotion in view of adverse remarks in his ACRs., for five years before 1983. It is not shown by the respondents that there was any technical error in the first order dated 31/7/2008. Thus it appears that the first order was passed in view of the specific direction given by the Industrial Court and confirmed by the Hon'ble High Court. After reading the operative order passed by the Industrial Court, it seems that direction was given to place the applicant in the gradation above the respondent nos. 4 to 21 (in that matter) with retrospective effect from 29/7/1982 in the cadre of Industries Inspector, Selection Grade and to give him all attending benefits accruing there from. The respondents were bound to establish that the applicant was not entitled for the deemed date in the cadre of Manager w.e.f. 26/6/1991. Even after going through the modification order, it seems that no cogent reason is given why deemed date was not given to the applicant w.e.f. 26/6/1991 or how the first order was wrong. It must be pointed out that this entire business was done by the Competent Authority and modified the deemed date in the cadre of Manager from 26/6/1991 to 26/7/1995 without giving opportunity of hearing to the applicant. It must be remembered that the applicant had filed the Contempt Petition in the Labour Court, Wardha as the order passed by the

Industrial Court was not complied. Assurance was given to the applicant that if the applicant withdraws the Contempt Petition, then order passed by the Industrial Court would be complied. The same submission was made before the Hon'ble High Court. It is pertinent to note that when repeated requests were made by the applicant to comply the direction given by the Industrial Court, instead of complying that direction, the modified order was forwarded by the respondents to the applicant. It is settled principle of law that no person can be condemned unheard. In the present matter it appears that when modified order dated 17/11/2008 was passed at that time the applicant was retired from the service. In these circumstances the unilateral decision taken by the respondents to change the deemed date in the cadre of Manager was apparently illegal business. In view of these circumstances we are compelled to say that this action of the respondents is illegal.

10. It is pertinent to note that the applicant is fighting for justice since 1995 though his Complaint was allowed and the Writ Petition came to be dismissed by the Hon'ble High Court. The respondents have taken much interest in not paying the amount due to the applicant as per the order dated 31/7/2008. In view of this, we are compelled to say that much loss is caused to the applicant due this conduct of the respondents; therefore, this is a fit case for

directing the respondents to pay interest on the outstanding amount.

In the result, we pass the following order –

ORDER

(i) The O.A. is allowed.

(ii) The respondents are directed to implement the order dated 31/7/2008. It is hereby declared that the order dated 17/11/2008 is illegal. The respondents are directed to pay arrears as per the order dated 31/7/2008 together with interest @ 7% p.a. from the date of this application till realization. The respondents are also directed to revise the pension of the applicant in pursuance of the order dated 31/7/2008. This order be compiled within three months from the date of decision.

(iii) The respondents to bear their own cost and shall pay amount Rs.10,000/- to the applicant on account of cost of this proceeding.

(Anand Karanjkar)
Member(J).

(Shree Bhagwan)
Vice-Chairman.

Dated :- 05/08/2019.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble V.C. and Member (J).

Judgment signed on : 05/08/2019.

and pronounced on

Uploaded on : 05/08/2019.