

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 641/2020 (S.B.)

Smt. Jayshree w/o Navinchandra Tank,
Aged 69 years, Occupation : Retired,
R/o Plot No. 43, Tapovan,
Asha Colony, Gajanan Maharaj Mandir Road,
Amravati-444 602.

Applicant.

Versus

- 1) State of Maharashtra,
Through it's Principal Secretary,
Public Health Department,
10th Floor, B Wing, GT Hospital Complex Building,
Mumbai- 400 001.
- 2) Directorate of Health Services,
(Maharashtra State) Arogya Bhavan,
St. George's Hospital Compound,
P.D'Mello Road, Mumbai - 400 001.
- 3) Dy. Director, Health Services,
Akola Circle, New Radhakisan Plots,
Akola-444 001.
- 4) Civil Surgeon,
General Hospital, Mother Teresa Road,
Khaparde Bagicha, Maltekdi,
Amravati, Maharashtra 444 606.

Respondents

Shri R.M.Fating, the Id. Advocate for the applicant.

Shri V.A.Kulkarni, the Id. P.O. for the respondents.

Coram :- Hon'ble Shri M.A.Lovekar, Member (J).

JUDGMENT

Judgment is reserved on 09th Oct., 2023.

Judgment is pronounced on 13th Oct., 2023.

Heard Shri R.M.Fating, Id. counsel for the applicant and Shri V.A.Kulkarni, Id. P.O. for the Respondents.

2. In this O.A. the applicant prays that she be declared to be entitled to first and second time bound promotion on 26.07.1996 and 26.07.2008, respectively, and the impugned order dated 15.01.2001 (A-14) granting her first time bound promotion w.e.f. 01.07.2000, though she had completed service of 12 years on 25.07.1995, be quashed and set aside.

3. By judgment dated 28.07.2008 complaint U.L.P. No. 511/1998 was dismissed by Labour Court rejecting her contention that she was entitled to higher pay scale w.e.f. 01.10.1995. In W.P.No.5261/2008 the Hon'ble Bombay High Court, by judgment and order dated 05.09.2019 (A-15), confirmed the order of Labour Court by observing as follows:-

I have heard the learned counsel for the parties at length and I have perused the documents on record. It is not in dispute that the petitioner entered service on 26.07.1983. She completed twelve years service on 25.07.1995. It is however seen that during the course of service there were two adverse remarks communicated to her at Exhibits 35 and 36. It has not been shown that those adverse remarks during the period from 1991 to 1995 were expunged. One of the requirements under Government Resolution dated 08.06.1995 for being eligible for grant of time bound higher pay-scale is eligibility to be promoted. In the light of the fact that there were two adverse remarks between the years 1991 to 1995 communicated to the petitioner, the Selection Committee rightly found the petitioner ineligible for grant of such time bound pay scale. Mere fact that twelve years' continuous service was rendered by itself was not sufficient to grant the benefit of time bound higher pay scale. Since the material on record did not indicate unblemished service during the relevant period, it is found that the Selection Committee rightly did not grant the petitioner the benefits under the Government Resolution dated 08.06.1995.

4. In support her prayers the applicant has relied on G.R. dated 01.08.2019 (A-19) which is a compilation of various G.Rs. issued on the subject till that point of time. Paras 1 to 3 of A-4 to this G.R. read as under:-

१) कार्यमूल्यमापन अहवाल :- शासकीय अधिकारी / कर्मचाऱ्यांचे गोपनीय अहवाल लिहिणे व जतन करणेबाबत संदर्भ क्र. २३ येथील दि.०१.११.२०११ च्या शासन निर्णयान्वये दिलेल्या सूचना व त्यामध्ये वेळोवेळी केलेल्या सुधारणा विचारात घेण्यात याव्यात. तसेच, पदोन्नतीच्या पात्रतेपर्यंत न पोहचणाऱ्यांच्या गोपनीय अहवालांवरील कार्यवाहीबाबत संदर्भ क्र.२४ येथील दि. १३.०२.२०१४ अन्वये दिलेल्या सूचना व त्यामध्ये वेळोवेळी केलेल्या सुधारणा विचारात घेण्यात याव्यात.

२) पदोन्नतीसाठी विचारात घ्यावयाच्या कार्यमूल्यमापन अहवालाचे संख्यात्मक गुणांकन :- माहे एप्रिल २०१७ ते मार्च २०१८ या आर्थिक वर्षापासून सर्व राज्य शासकीय अधिकारी/ कर्मचाऱ्यांचे गोपनीय अहवालाचे सर्वसाधारण मूल्यमापन, प्रतवारी (Gradation) पध्दतीऐवजी संख्यात्मक गुणांकनाच्या पध्दतीद्वारे मूल्यमापन केले जात आहे. तथापि, त्यापूर्वीचे गोपनीय अहवाल प्रतवारी स्वरूपातील असल्यामुळे ५ वर्षांच्या गोपनीय अहवालांचे मूल्यांकन करताना

एकसूत्रीपणा यावा यासाठी संदर्भ क्र. ३२ येथील दि.०२.०२.२०१७ च्या शासन निर्णयानुसार प्रतवारी खालीलप्रमाणे संख्यात्मक गुणांकनात रुपांतरीत करण्यात यावी.

| मूल्यमापन | प्रतवारी (Grading) | संख्यात्मक गुण |
|------------------|--------------------|----------------|
| साधारणपेक्षा कमी | क | २ |
| सर्वसाधारण | ब- | ३ |
| चांगला | ब | ४ |
| निश्चित चांगली | ब+ | ५ |
| उत्कृष्ट | अ | ६ |
| अत्युत्कृष्ट | अ+ | ८ |

३) पदोन्नतीच्या विविध टप्प्यासाठी किमान आवश्यक पात्रता गुण:- संदर्भ क्र. ५ येथील दि. २१ फेब्रुवारी १९९४ व संदर्भ क्र.७ येथील दि. २३ डिसेंबर २००२ चा शासन निर्णय अधिक्रमित करण्यात येत आहे. संदर्भ क्र. ३२ येथील दिनांक २ फेब्रुवारी २०१७ नुसार विहित केलेली १ ते १० या मर्यादेत संख्यात्मक गुण देण्याची पध्दत विचारात घेऊन, पदोन्नतीच्या विविध टप्प्यांसाठी गुणांकनानुसार ५ वर्षांच्या एकूण ५० गुणांपैकी किमान आवश्यक पात्रता गुण (Benchmark Score) पुढीलप्रमाणे विहित करण्यात येत आहे.

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| पदोन्नतीचे टप्पे | ५ वर्षांचे एकूण ५० गुणांपैकी किमान आवश्यक पात्रता गुण (Benchmark Score) |
| शासन सेवेतील गट-क, गट-ब व गट-अ मधील पहिल्या टप्प्यापर्यंतच्या सर्व पदावरील पदोन्नती | २० |
| गट-अ मधील दुसरा टप्पा व त्यापुढील पदे परंतु आस्थापना मंडळाच्या कार्यक्षेत्र नसलेली पदे | २५ |
| गट-अ मधील आस्थापना मंडळाच्या कार्यक्षेत्रील पदे | ३० |

5. It is the contention of the applicant that his A.C.Rs. for the relevant period were as follows:-

| <u>Year</u> | <u>Gradation in words</u> | <u>Marks of Gradation</u> |
|-------------|---------------------------|---------------------------|
| 1991-92 | A | 6 |
| 1992-93 | A | 6 |
| 1993-94 | B- | 3 |
| 1994-95 | B- | 3 |
| 1995-96 | B+ | 5 |
| | Total | 23 |

6. It was contended by Shri Fating, Id. counsel for the applicant that for the preceding 5 years total score of A.C.Rs. of the applicant was 23, it had crossed the benchmark of 20 set for first time bound promotion and hence, the applicant should be extended benefits of first time bound promotion w.e.f. 26.07.1996 and second time bound promotion w.e.f. 26.07.2008. Here, it may be mentioned that the applicant retired on superannuation on 31.08.2009.

7. Stand of respondent no. 3 is that claim of the applicant is time barred. For 93/94 and 94/95 A.C.Rs. of the applicant were "average/adverse" and the same were communicated to her (A-11). Since the applicant was found to be not entitled to first time bound promotion on 25-26/07/1995, her A.C.Rs. for following 5 years were considered and accordingly she was held entitled to first time bound promotion w.e.f. 01.07.2000. The applicant does not dispute that for 93/94 and 94/95 her A.C.Rs. were "average/adverse" and the same were communicated to her. Her claim is based on G.R. dated 01.08.2019 which prescribes weightage to be given to different gradations. It is the contention of the applicant that from 1991-1992 to 1995-1996 she had scored 23 marks, she had thus attained the benchmark of 20 and become entitled to get first time bound promotion w.e.f. 26.07.1996.

8. It was submitted by Id. P.O. that as per G.R. dated 21.02.1994 (A-16) time bound promotion could not be granted if even one A.C.R. from out of 5 pertaining to the relevant period was below B i.e. below 3 in terms of marks. Relevant portion of G.R. dated 21.02.1994 reads as under:-

शासन सेवेतील गट "अ" मधील प्रथम पदावरील पदापर्यंतच्या सर्व गटातील पदोन्नत्या ज्येष्ठता अधीन पात्रता या निकषानुसार देण्यात याव्यात. पात्रता

निश्चित करण्यासाठी विचारक्षेत्रातील सर्व अधिका-यांचे ५ वर्षांचे गोपनीय अभिलेख तपासून शासन निर्णय, सामान्य प्रशासन विभाग, क्रमांक - एस आर व्ही १०८९/३६५४/प्र.क्र.१२/८९/१२, दिनांक २८.३.९० मध्ये नमूद केल्याप्रमाणे ज्यांच्या गोपनीय अभिलेखांची किमान सरासरी प्रतवारी "ब" (बी) येत असेल तर संबंधितांना ज्येष्ठतेनुसार निवडसूचीत अंतर्भूत करण्यात यावे.

Aforequoted position is consistent with what G.R. dated 01.08.2019 lays down i.e. average of total score for 5 years should come to 4 i.e. gradation B. Therefore, aforesaid contention of the Id. P.O. cannot be accepted.

9. It may be mentioned that pleading of the applicant regarding gradation of her A.C.Rs. from 1991-1992 to 1995-1996 has not been traversed by the respondents.

10. It was further submitted by the Id. P.O. that A.C.Rs. of the applicant for 1991-1992, 1992-1993 and 1995-1996 were not traceable. In **Girish Pande Vs. The State of Jharkhand and Ors. (Judgment dated 07.07.2017)** Hon'ble Jharkhand High Court has held that in the absence of A.C.Rs. benefits of A.C.P. and even promotion cannot be withheld because it is the fault of the employer and not of the employee.

11. It is apparent on record that the respondents were not justified in deferring consideration of claim of the applicant for time

bound promotion for a period of 5 years on the basis of determination of Labour Court which was confirmed by the Hon'ble High Court that the applicant was not entitled to get first time bound promotion on 25.07.1995. The respondents ought to have considered thereafter whether the applicant was entitled to get first time bound promotion w.e.f. 26.07.1996.

12. Considering the factual and legal position stated above, following order shall be just and proper. **The O.A. is allowed in the following terms.** The respondents shall make an endeavour to trace relevant A.C.Rs. of the applicant and if the same cannot be traced within one month from today, they shall proceed on the basis of information furnished by the applicant herself regarding the same, and take steps to extend benefits of first and, if eligible second time bound promotion. This process shall be completed within further three months. No order as to costs.

Member (J)

Dated :- 13/10/2023
aps

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

Name of Steno : Akhilesh Parasnath Srivastava.

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

Judgment signed on : 13/10/2023
and pronounced on

Uploaded on : 16/10/2023