

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 750/2022 (S.B.)**

Kailas Wanvasrao Parteki,
Aged about 57 years,
Occ. Service (ASI-RM),
R/o Ridhi-2 Apartment,
Flat No. 302, Near Ayyapa Mandir,
Tukum, Chandrapur.

Applicant.

Versus

- 1) The State of Maharashtra,
Through it's Secretary,
Home Department,
Mantralaya, Mumbai- 400 032.
- 2) The Director General of Police (M.S.),
Hutatma Chowk,
Near Regal Cinema,
Mumbai.
- 3) The Additional Director of Police,
Wireless Office, Pashan Road,
Pune-5.
- 4) The Superintendent of Police Chandrapur,
Tah. & Dist. Chandrapur.

Respondents

Shri S.N.Gaikwad, Id. Advocate for the applicant.

Shri H.K.Pande, Id. P.O. for the respondents.

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

JUDGMENT

Judgment is reserved on 01st Nov., 2023.

Judgment is pronounced on 03rd Nov., 2023.

Heard Shri S.N.Gaikwad, ld. counsel for the applicant and Shri H.K.Pande, ld. P.O. for the Respondents.

2. The applicant whose date of birth is 25.03.1965, joined the respondent department on 13.10.1989 as Assistant Sub Inspector which is a Group-C post. Government of Maharashtra issued G.Rs. dated 08.06.1995, 20.07.2001, 01.04.2010 and 02.03.2019 (Annexures A-2, A-3 and A-4, respectively) for granting time bound promotions to eligible employees. As per G.R. dated 01.11.1977, G.R. dated 28.11.1979 (A-5, collectively) on attaining age of 45 years employees were held entitled to exemption from passing departmental examination for continuation, confirmation and promotion. The applicant was unjustly deprived of benefits of these G.Rs. This is contrary to consistent view taken by this Tribunal and the Hon'ble Bombay High Court. Hence, this Original Application seeking direction to respondent no. 3 to extend these benefits to the applicant.

3. Stand of respondents 1 to 4 is that the applicant will not be entitled to benefits of time bound promotions as he had not cleared departmental examination. This stand of the respondents cannot be

accepted in view of legal position laid down as follows by the Hon'ble Bombay High Court in judgment dated 25.01.2022 in a batch of W.Ps. :-

While the State insists upon the concerned employees to pass the departmental examination for being entitled to benefit of time bound promotion, the employees contend that they are entitled to be treated similarly as employees of other departments are treated where passing of the said requisite examination is not mandatory for being granted the relief of time bound promotion. This aspect has been considered in detail by the Division Bench in Mukund Shankarlal Daima (supra). In paragraphs 17 and 18, it has been observed as under:

17. It has been argued on behalf of the petitioner, even in the Police department, save Wireless section, the General Administration Department's directions and instructions have been applied and quite a few persons have been given promotions who have attained age of 45 years without requiring them to pass departmental examination for promotion. This particular aspect has not been met with by any counter argument on behalf of the respondent. Further, benefit of promotions appears to have been given to quite a few departments of the Government including Engineering department, as referred to above without there being suitable amendments to promotional rules. Thus, it appears that so far as Wireless section of Police department is concerned, the authorities are taking a rather hyper-technical view under the plea that as the rules have not yet undergone amendment pursuant to the instructions issued thus far.

18. In the circumstances, we consider it expedient to follow suit in the decision given by Division Bench in Writ Petitions no. 6212 of 2011 and other companion matters. Having regard to observations therein, that decision of General Administration Department of Government would be binding on all departments of the State and a department of Government would not be permitted to take a different stand as it appears only 'Wireless Section' of Police Department has not been extended the benefit."

Perusal of the aforesaid observations clearly indicate that even in the Police Department, the directions issued by the General Administration Department in the matter of grant of time bound promotion had been

followed except the Wireless Section. The Court therefore held that the decision of the General Administration Department would be binding on all departments and it would not be permissible for the Police Department to take a different stand with regard to the Wireless Section. It is not in dispute that this judgment of the High Court has attained finality. The State has not challenged the same before the Hon'ble Supreme Court. It is further informed that the petitioner therein has been granted necessary benefit of time bound promotion. Similar is the case with regard to the adjudication of Original Application No.422/2016 and connected applications. The Tribunal followed the decision of this Court in Mukund Shankarlal Daima (supra) and granted relief to the applicants therein. The State Government has accepted this decision and has thereafter on 17.06.2020 granted necessary benefit of time bound promotion to the applicants therein. In other words, the employees of the Wireless Section of the Police Department who had approached the Tribunal or this Court have been extended benefit of time bound promotion by not requiring them to pass the requisite examination.

7. The learned counsel for the respondents are justified in relying upon the decision in Arvind Kumar Srivastava (supra). Paragraph 22.3 thereof reads as under:

“22.3. However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma v. Union of India). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence”.

The aforesaid observations clearly apply to the present facts inasmuch as the earlier adjudication in Mukund Shankarlal Daima (supra) was one in rem and not in personam. It was thus the duty of the State to extend the benefit of time bound promotion to all members of the

Wireless Section of the Police Department without insisting for specific orders in that regard from the Court. The aforesaid observations also take care of the submission that the claims made before the Tribunal were barred by limitation. It has been rightly observed by the Tribunal that as a model employer the State ought to have extended such benefit to all members of the Wireless Section of the Police Department. Having failed to do so, the State cannot be permitted to raise a grievance regarding bar of limitation in these cases. Admittedly, the State has granted benefit to the employees who approached the Court and there is no reason to exclude the petitioners who are similarly situated. We therefore find that the aspect of limitation would not result in denying the respondents the benefit of time bound promotion.

4. In view of aforequoted legal position the O.A. is allowed in the following terms. The respondents are directed to verify case of the applicant and if he is found to be entitled, extend benefit of time bound promotion/ assured progressive scheme from the date he has completed 45 years of age. Accrued amount of consequential benefits shall be paid within three months from today. No order as to costs.

Member (J)

Dated :- 03/11/2023

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 : 03/11/2023
and pronounced on

Uploaded on : 06/11/2023