MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO. 1026/2018 (D.B.)

Shri Sharad s/o Dinkar Pachkhede,
Aged – 57 Yrs., Occ. Service,
R/o. C/o K. S. Awatade Patel Nagar,
Chandrapur

Applicant.

Versus

1) State of Maharashtra through
Principal Secretary, Water Supply &
Sanitation Department, 7th Floor,
Gokuldas Tejpal Hospital Building,
Lokmanya Tilak Road, Mantralaya
Mumbai-4

2) The Director, Ground Water Supply
& Development Agency,
Maharashtra State, Bhujal Bhavan,
Shivaji Nagar, Pune-411005

3) The Deputy Director, Ground Water
Supply & Development Agency,
Maharashtra State, Pradhikaran
Building, Telangkhedi Civil Lines
Nagpur.

4) Senior Geologist
Ground Water Supply &
Development Agency,
Administrative Building Room No.
15, 16 Chandrapur

5) Senior Geologist Ground Water
Supply & Development Agency,
Complex Area Barak No.2
Gadchiroli

Respondents

Shri N.N.Thengre, Ld. Counsel for the applicant.
Shri A.M.Khadatkar, Ld. P.O. for the respondents.

Coram:-Hon'ble Shri Shree Bhagwan, Vice-Chairman and
Hon'ble Shri M.A.Lovekar, Member (J).
Dated: - 02nd December 2022.

JUDGMENT

Per :Member (J).

Judgment is reserved on 15thNovember, 2022.

Judgment is pronounced on 02nd December, 2022.

Heard Shri N.N.Thengre, learned counsel for the applicant and Shri A.M.Khadatkar, learned P.O. for the respondents.

2. Case of the applicant is as follows.

Order of termination of the applicant dated 21.03.1997 was ultimately decided by the Hon'ble Bombay High Court in L.P.A.No.36/2009 by order dated 11.03.2010 (Annexure A-1) and order dated 11.03.2010 has attained finality by virtue of order of dismissal of S.L.P. by the Hon'ble Supreme Court by order dated 22.07.2013 (Annexure A-2). While allowing the L.P.A. it was *inter alia* directed –

> ***(d) Complainant – workman is reinstated with continuity of service, however, without backwages. He shall be entitled to all consequential benefits, except getting actual payment of arrears of backwages.***
>
> ***(e) He be reinstated within 90 days from the date of Judgment.***

3. Being aggrieved by failure of the respondents to implement the order dated 11.03.2010 within 90 days the applicant filed a Contempt Petition. The applicant joined under protest on his earlier post on 20-04-2015 (Annexure A-3). Consequent upon dismissal of S.L.P. G.R. dated 01.04.2015 (Annexure A-5) and order dated 10.04.2015 (Annexure A-6) were issued. On 04.02.2016 respondentno.3 issued an amended order (Annexure A-4) as follows-

श्री.शरद दिनकर पाचखेडे यांच्या सेवा कनिष्ठ लिपीक (वर्ग-३) या पदावर, दिनांक २४/१०/१९८१ पासुन नियमित करण्यात येत आहे. त्यानुसार त्यांना त्यावेळी कनिष्ठ लिपीक पदास लागु असलेली वेतनश्रेणी (नियमानुसार देय्य असलेल्या भत्त्यासह) लागु राहील. तसेव, दिनांक २४/१०/१९८१ ते ११/०३/२०१० हा कालावधी त्यांचा कर्तव्य कालावधी गणण्यात यावा. मात्र त्या कालावधीची वेतन व भत्त्याची कोणतीही थकबाकी त्यांना देय राहणार नाही. तसेच दिनांक ११/०३/२०१० पासुन त्यांना लागु होणा-या वेतनातुन त्यांनी रोजंदारी तत्वावर काम केल्यामुळे मंजुर करण्यात आलेल्या मजुरीची रक्कम समायोजित करुन संबंधितास दिनांक ११.०३.२०१० पर्यंत थकबाकी देयं राहील संदर्भ क्र.१ च्या आदेशातील नियुक्तीचे कार्यालय तसेच अटी व शर्ती पुर्वी प्रमाणेच लागु राहील.

Being aggrieved by denial of time bound promotions after 12 and 24 years, the applicant made a representation dated 13.10.2016 (Annexure A-7). By communication dated 19.12.2016 (Annexure A-8) respondent no.5 sought guidance from respondent no.4 regarding grant of time bound promotions to the applicant since after resuming duty he had worked only for one year and six months.

4. The only prayer made in the application is that the applicant be granted time bound promotion on completion of 12 and 24 years of service in 1993 and 2005, respectively.

5. Documents at Annexures A-9 to A-22 relate to the complaint made by the applicant against respondent no.4 and 1 Megha Kamble, and charge sheet served to the applicant on the following chares-

<u>बाब क्र.(१):-</u> **वरिष्ठांचे आदेशाचे पालन न करणे**

<u>बाब क्र.(२):-</u> **कर्तव्यात कसुर करणे**

<u>बाब क्र.(३):-</u> **नितांत सचोटी न राखणे**

<u>बाब क्र.(४):-</u> **अशोभनिय ठरेल अशी कोणतीही गोष्ट करता कामा नये.**

Hence, this Original Application for the aforesaid relief.

6. The applicant has placed on record at page 98 communication dated 17.01.2019 made by respondent no.3 to respondent no.2 which *inter alia* states-

श्री. श.दि.पाचखेडे, (कनिष्ठ लिपीक) यांनी संदर्भ क्र.३ आदेशातील अट क्र. ५ ची पुर्तता केली नसल्याने संबंधीतास <u>पहीली व दुसरी कालबध्द पदोन्नती मंजूर करण्याचे आदेश विचारात घेण्यात आले नाही.</u>

संदर्भ क्र.५ अन्वये वरिष्ठ भूवैज्ञानिक, गडचिरोली यांना या कार्यालयाचे आदेश दिनांक १०/०४/२०१५ मधील अट क्र.५ ची कार्यवाही करणेबाबत कळविण्यात आले आहे. व श्री.पाचखेडे यांचेकडुन वैद्यकीय दृष्टया पात्र असल्याचे प्रमाणपत्र विना विलंब सादर करणेबाबत कळविण्यात आले आहे.

त्याअनुषंगाने श्री.पाचखेडे यांनी दिनांक १५.१२.२०१८ रोजी वरिष्ठ भूवैज्ञानिक, भूजल सर्वेक्षण आणि विकास यंत्रणा, गडचिरोली यांना वैद्यकीय दृष्टया पात्र असल्याचे प्रमाणपत्र सादर केले आहे.

It is further stated in this communication –

श्री. श.दि.पाचखेडे, (कनिष्ठ लिपीक), कार्यालय वरिष्ठ भूवैज्ञानिक, भूजल सर्वेक्षण आणि विकास यंत्रणा, गडचिरोली यांनी त्यांचे दिनांक १०.१२.२०१८ चे

अर्जात मागणी केल्यानुसार संबंधितास आश्वासित योजनेचा पहिला व दुसरा लाभ द्यावे किंवा कसे याबाबत मार्गदर्शन मिळणेबाबत विनंती करण्यात येत आहे.

There is nothing on record to show that pursuant to this communication respondent no.2 has taken any decision one way or the other about granting or declining time bound promotions to the applicant.

7. In their reply the respondents have referred to G.R. dated 01.11.1995. The G.R. refers to certain queries and answer to the same. Query no.2 and answer thereto read as under-

उपस्थित मुद्दा :- २. रुपांतरीत अस्थायी आस्थापनेवरील कर्मचारी प्रथम रोजंदारीवर सरळ सेवेने नियुक्त झालेले असतात. यास्तव अशा रुपांतरीत आस्थापनेवरील कर्मचा-यांची १२ वर्षाची सेवा प्रथम नियुक्तीच्या दिनांकापासून गणण्यात यावी किंवा कसे ?

स्पष्टीकरण :- दि.८.६.९५ च्या शासन निर्णयात स्पष्ट केल्यानुसार पदधारकांची पदावरील १२ वर्षाची नियमित सेवा होणे आवश्यक आहे. रोजंदारीवरील सेवा ही नियमित सेवा नसल्याने रोजंदारीवरील नियुक्तीच्या/प्रथम नियुक्तीच्या दिनांकापासून १२ वर्षाचा कालावधी गणणे अभिप्रेत नाही.

8. To his rejoinder at pp.112 to 119 the applicant has attached certain judgments and orders. By order dated 01.03.2019 the High Court, after observing that order dated 11.03.2010 passed in S.L.P. was required to be complied with within 90 days and it was not so

complied, proceeded to drop the contempt proceeding by observing that the applicant could avail remedy under Section 33 (c) of the Industrial Disputes Act. O.A.No.428/2018 filed by the applicant was dismissed with costs of Rs.5000/- by order dated 30.07.2018 by observing that it amounted to an abuse of process of law since the prayer for grant of backwages was clearly contrary to the order passed in S.L.P. on 11.03.2010. Order dated 30.07.2018 passed in O.A.No.428/2018 was challenged in W.P.No.7996/2018 which was dismissed on 29.11.2018. Review Application St.No.784/2019 and C.A.144/2019 were dismissed by order dated 18.04.2019 by observing that order in O.A.No.428/2018 was confirmed in W.P.No.7996/2018 declining backwages and the remedy to claim the same lay before the Hon'ble Supreme Court.

9. We have referred to G.R. dated 01.11.1995 and communication dated 17.01.2019 made by respondent no.3 to respondent no.2. There is nothing on record to show that respondent no.2 has passed any order either granting or declining time bound promotion/s to the applicant. Under the circumstances the O.A. can be disposed of by directing respondent no. 2 to take decision in respect of time bound promotion/s of the applicant. Hence, the order.

ORDER

The respondent no.2 shall take a decision in accordance with law as to whether or not the applicant is entitled to get time bound promotion/s. This decision shall be taken within two months from today and it shall be promptly communicated to the applicant. In case this decision goes against the applicant, it would be open to him to approach this Tribunal by filing an O.A. With these directions the O.A. is disposed of with no order as to costs.

(M.A.Lovekar)
Member (J)

(Shree Bhagwan)
Vice Chairman

Dated – 02/12/2022

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

Name of Steno	:	Raksha Shashikant Mankawde
Court Name	:	Court of Hon'ble Vice Chairman & Court of Hon'ble Member (J) .
Judgment signed on and pronounced on	:	02/12/2022.
Uploaded on	:	02/12/2022.