

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 26/2022(D.B.)**

Satish Ambadas Jamthe,
Aged about 43 years, Occupation : Service (Peon).
R/o Harshraj colony, Near Mahatme Hospital,
Amravati, Tah. & Dist.Amravati.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Principal Public Health,
Development Department,
Mantralaya, Mumbai - 32.
- 2) The Deputy Director,
Public Health Services,
Akola Division, Akola.
- 3) The District Civil Surgeon,
General Hospital, Amravati,
Tah.& Dist. Amravati.
- 4) The District Filaria Officer,
Amravati, Tah. & Dist.Amravati.

Respondents

Shri S.N.Gaikwad, Ld. Counsel for the applicant.
Shri A.P.Potnis, Ld. P.O. for the respondents.

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

Dated: - 21st December 2022.

JUDGMENT**Per :Member (J).****Judgment is reserved on 30th November, 2022.****Judgment is pronounced on 21st December 2022.**

Heard Shri S.N.Gaikwad, learned counsel for the applicant and Shri A.P.Potnis, learned P.O. for the respondents.

2. Case of the applicant is as follows.

The applicant was appointed as a Peon on 27.02.2004 (Annexure A-1). Crime No.208/2017 was registered against him whereupon he was placed under suspension on 01.04.2017. By order dated 08.01.2021 (Annexure A-2) order of suspension was revoked and it was directed that the period of suspension shall be treated as duty period. By order dated 16.09.2021 (Annexure A-3) process to fill up posts of Junior Clerk by promotion from Group – D cadre started. In the list of shortlisted candidates name of the applicant was at Sr.No.26. However, in the column of remarks it was stated –

कार्यालयाबाहेरील प्रकरणामध्ये पोलीस स्टेशनच्या एफ.आय.आर. नुसार विभागीय चौकशीत दोषमुक्त करण्यात आले असल्याने दि.१०.०१.२०२० रोजी निलंबन रद्द करून सेवेत रुजू करण्यात आले आहे.

The applicant came to know that his claim for promotion was denied because of pendency of Criminal case. Against this denial he

made a representation (Annexure A-4). Respondent no.3, with covering letter dated 28.12.2021 (Annexure A-5), forwarded it to respondent no.2. In the matter of considering case of the applicant for promotion to the post of Junior Clerk respondent no.3 had obtained an opinion from the D.G.P., Amravati. His opinion was that since the alleged incident which had led to registration of offence/ Criminal case had no nexus with discharge of official duties the applicant could be promoted subject to the outcome of Criminal Proceeding pending against him. Hence, this O.A. for the following reliefs-

- i. allow the instant original application with costs;*
- ii. be pleased to direct the respondent No.1 i.e. The Deputy Director of Health Services, Akola Division, Akola to promote the applicant on the post of Junior Clerk with immediate effect;*
- iii. further be pleased to direct the respondent No.1 i.e. The Deputy Director of Health Services, Akola Division, Akola to grant deemed date of promotion from the date when his junior is promoted.*

iv. grant any other relief which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the instant application.

3. In their reply at pp.21 to 25 respondents 2 to 4 have averred that the applicant was exonerated in Departmental Proceeding but the Criminal Proceeding is still pending because of which the applicant has not been promoted.

4. The facts stated above are not in dispute. Thus, the only question is whether on account of pendency of Criminal case promotion of the applicant can be indefinitely deferred. In view of the following rulings this question will have to be answered in the negative.

(1) ***Tanveer Ahmad Khan Vs. J.K.Bose and Others Judgment dated 17.08.2022 of Jammu and Kashmir High Court in SWP No.1065/2017.***

(2) ***Neeraj Kumar Pandey Vs.The State of U.P. And 5 Others Judgment dated 26.05.2022 of Allahabad High Court in WRIT-A No.8151 of 2022.***

(3) ***Dr.Sushama Barik Vs. State of Odisha & Another Judgment dated 03.08.2021 of Orrisa High Court in W.P.No.21795 of 2021.***

In all these judgments it is consistently held that merely on account of pendency of Criminal Case promotion cannot be indefinitely deferred. Hence, the order.

ORDER

The O.A. is allowed in the following terms.

Respondent no.2 is directed to promote the applicant to the post of Junior Clerk if he is otherwise found fit, and grant all consequential benefits within two months from today, subject, however, to the outcome of pending Criminal case. No order as to costs.

(M.A.Lovekar)
Member (J)

(Shree Bhagwan)
Vice Chairman

Dated – 21/12/2022

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 : 21/12/2022.
and pronounced on
Uploaded on : 21/12/2022.