

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 584 of 2017 (D.B.)**

Eknath S/o Watuji Madavi,  
Aged about 58 years, Occ.-Service,  
R/o Vidarbha Society Colony,  
Near Hanuman Mandir, Bhandara.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
Through its Secretary,  
School Education & Sports Department,  
Having its office at  
Mantralaya, Mumbai-400 032.
- 2) State of Maharashtra,  
Through Principal Secretary,  
General Administration Department,  
Having its office at  
Mantralaya, Mumbai-400 032.

**Respondents**

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**Shri S.P.Palshikar, Id. Advocate for the applicant.**

**Shri A.M.Ghogre, Id. P.O. for the respondents.**

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**WITH**

**ORIGINAL APPLICATION No. 585 of 2017**

Vishwas S/o Ganpatrao Labde,  
Aged-57 years, Occ. -Service,  
R/o Chinchbhawan Wardha Road,  
Nagpur.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
Through its Secretary,  
School Education & Sports Department,  
Having its office at  
Mantralaya, Mumbai-400 032.
  
- 2) State of Maharashtra,  
Through Principal Secretary,  
General Administration Department,  
Having its office at  
Mantralaya, Mumbai-400 032.

**Respondents**

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**Shri S.P.Palshikar, Id. Advocate for the applicant.**

**Shri A.M.Ghogre, Id. P.O. for the respondents.**

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**Coram :- Hon'ble Shri J.D. Kulkarni,  
Vice-Chairman (J).**

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**COMMON JUDGEMENT**

**(Delivered on 04<sup>th</sup> day of January, 2018)**

Heard Shri S.P.Palshikar, Id. counsel for the applicants and Shri A.M.Ghogre, Id. P.O. for the respondents (in O.A.Nos. 584 & 585 of 2017).

2. Both these applications are being disposed off by this common Judgment, since the issue involved in both the O.As. is similar. The applications are being disposed off with consent of the counsels for respective parties.

3. The applicant in O.A.584/17, Shri Eknath Wathuji Madavi has entered in Government service as Block Education Officer on

06/07/1981 and was posted at Panchayat Samiti Dhanora. He was promoted as Education Officer (primary) on 31/10/2011 and was posted at Z.P., Nanded. He was transferred to Bhandara and is working as Education Officer (continuing education) Z.P., Bhandara since 06/11/2015. He is due for promotion as Deputy Director of Education.

4. The applicant in O.A. 585/2017 was also appointed as Block Development Officer and also posted at Panchayat Samiti Malkapur, District Buldhana on 21/06/1991. He was promoted as Education Officer (primary) and also posted at Z.P., Nagpur on 31/10/2011 and is working as Education Officer (continuing education), Z.P., Nagpur. He was also due for promotion of Deputy Director of Education.

5. The meeting of Departmental Promotion Committee was held on 08/12/2016 in which the name of the applicants were considered and recommended for promotion to the post of Deputy Director of Education, subject to outcome of departmental enquiry. The options from the applicants were called and accordingly the applicants had submitted their options on 07/04/2017. The applicants should have been promoted to the post of Deputy Director of Education as per letter dated 05/04/2017 and as per the guidelines in circular dated 02/04/1976. According to the applicants, the

departmental enquiry against them is still pending since last two years. The respondent no. 1 issued orders of promotion, whereby five Education Officers have been promoted as Deputy Directors of Education and out of these five officers, departmental enquiry are pending against three officers. In the similar circumstances, however, the applicants have not been considered for promotion and, therefore, they have filed these two separate O.As. for their respective promotion. It is claimed that the respondent no. 1 shall issue promotion order in favour of the applicants as Deputy Directors of Education forthwith and the applicants be granted deemed date of promotion to the said post as on 12/07/2017, when their other batch-mates were promoted.

6. In both the O.As. the respondent no. 1 has filed reply affidavit and justified the decision taken by the respondents in not giving posting to the applicants on promoted posts. It is stated that the decision has been taken not to post the applicants on promoted post during pendency of the departmental enquiry against them as per the Government Resolution dated 02/04/1976 and it is a conscious decision, looking to the gravity of the case against the applicant.

7. The Id. counsel for the applicants Shri S.P.Palshikar submits that in the similar situation the respondent authority has given an appointment to one Shri Prashant Digraskar, though a criminal

case was pending against him. According to the respondents, Shri Digraskar was appointed for the first time by nomination and his case has been considered as per the guidelines under Government Resolution dated 26/08/2014 and he was not promoted.

8. The Id. counsel for the applicant further submitted that one Shri Mahesh Karajgaonkar is promoted subject to outcome of departmental enquiry. According to the respondents, the case of Shri Karajgaonkar is not analogous to that of the applicants. It is stated that appropriate decision will be taken after conclusion of the departmental enquiry against the applicants and the applicants will be entitled to claim deemed date of promotion in case of departmental enquiry is decided in their favour as per the directions in Government Resolution dated 02/04/1976.

9. The Id. counsel for the applicants Shri S.P.Palshikar also submitted that the respondent no. 1 has discriminated the applicants as against the appointment of Shri Prashant Digraskar and promotion of Shri Mahesh Karajgaonkar. Admittedly, Shri Digraskar has been appointed for the first time as a Deputy Director of Education by nomination and it seems that some crime was registered against Shri Digraskar. However, the case of Shri Digraskar for appointment was referred to the Government and the Government has taken a decision to appoint Shri Digraskar by nomination as per order dated

20/02/2016. While granting the sanction for appointment of Shri Digraskar, the Government has taken benefit of Government Resolution dated 26/08/2014, which states that if the crime is registered against the proposed employee, he shall not be denied appointment on that basis. Unless the person is convicted, he cannot be said to be ineligible for appointment. Since the appointment of Shri Digraskar is by nomination and not by promotion, it is not covered by Government Resolution dated 02/04/1976 and, therefore, it cannot be said that the respondents have committed any discrimination in appointing Shri Digraskar by nomination.

10. So far as the promotion of the applicants is concerned, admittedly the same has been considered in view of Government Resolution dated 02/04/1976 (Annexure-A-3). This Government Resolution states about interim promotion during pendency of the clause 3 which reads as under:-

**Interim promotion during the pendency of the proceedings:-**

If the person is found and his name is provisional included in the select list;

(a) During the pendency of the proceedings, the question of promoting a person under suspension does not arise such a person shall not be promoted.

(b) In respect of a person who is not under suspension, the competent authority should take a conscious decision, after taking into consideration the nature of the charges levelled whether the person should be promoted without waiting for the conclusion of the enquiry. If it is decided that he should be so promoted such promotion will be provisional and will be reviewed on the conclusion of the investigation or enquiry.

4. On conclusion of the investigations and/or departmental enquiry.

11. The cases of the applicants lie within clause 3 (b) as aforesaid. The Government Resolution clearly says that the appointing authority should take a conscious decision after taking into consideration the nature of the charges levelled and it shall be considered as to whether the persons should be promoted without waiting for conclusion of the enquiry or not. The Id. P.O. has invited my attention to the minutes of the meeting, in which, a decision as regards applicants promotion was taken. The minutes of meeting says that it was decided to promote such officers including the applicants and it was also decided that the applicants shall be promoted, subject to outcome of the departmental enquiry. In the minutes of meeting it was stated as to whether Shri Madavi and Shri Labde (applicants) shall given posting on promoted post during pendency of the departmental enquiry shall be taken considering the allegations against the applicants. In the said meeting, the decision was taken not to post the officers who are facing departmental enquiry as per rule 8 of The Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and, therefore, it was a conscious decision not to issue promotion orders of such officers including applicants. The opinion was given by the Secretary, Education Department, Government of Maharashtra and it was approved by the Hon'ble Education Minister as well as Hon'ble Chief Minister. In short, it was a conscious decision not to

post the applicants on promoted post, who were facing departmental enquiry and considering the charges framed against the applicant in the departmental enquiry. It is stated that two departmental enquiries are pending against applicant Shri Eknath Madavi.

12. I have also perused the charges levelled against the applicant Shri Eknath Madavi in one of the departmental enquiry. The charge against the applicant is as under :-

Jh- , dukFA eMkoh] f'A{A.Akf/Adkjh ¼i kFAfed½ ft-i-ukanM ; k inkoj dk; j r vl rkauk R; kpsdMsf' A{A.Akf/Adkjh ¼ek/; fed½ ft-i-ukanM ; k inkp vkfrfjDr dk; HAKj vl rkauk R; kauh 'AKI u fu.AZ dZl fd.AZ - 2011@4447@11½ ¼v½i kf' A -3]fn-2-5-2012 e/Any funZ AkpsmYyZAu d: u canh dkyko/Ahr vl ngrmus, dWA 35 oS fDrd eku; rk nou vf; ferrk dsh vkgS 35 eku; rki sdh i kFAfed foHAKxkrhy 18 eku; rk nou 'AKI ukps: lk; s21]95]293@- brdsvkFAZd uplI ku >kysvkgS rl p ek/; fed f'A{A.A foHAKxkrhy 17 oS fDrd eku; rk nou 'AKI ukps : IA; s 51]73]926@- brdsvkFAZd uplI ku >kysvkgS ukanM ftYg; ke/; svfrfjDr f'A{Ad dk; j r vl rkauk Jh eMkoh ; kauh u0; kusfnyY; k 35 oS fDrd eku; rkeG'S 'AKI ukps , dWA : -73]69]219@brdsvkFAZd uplI ku >kysvkgS

Jh , dukFA eMkoh] f'A{A.Akf/Adkjh ¼i kFAfed½ ft-i-ukanM o i zf' A{A.Af/Adkjh ¼i kFAfed½ ft-i-ukanM o i zf' A{A.Akf/Adkjh ¼ek/; fed½ ft-i-ukanM ; k inkoj dk; j r vl rkauk R; kauh vki ys drD; ctkforkuk vki ys dkekr l pkS/h] drD; ijk; .Ark bR; kfn jk[A.; kph tckcnkjh vl rkaukgh R; kauh vki Y; k drD; kr dl ij d: u e-uk-l s ¼orZAnd½ fu; e] 1979 P; k fu; e 3 pk HAK dshk vkgS

13. The reply affidavit in O.A.585/2017 in respect of Shri Labde also shows that his service record is not good. He was punished with stoppage of 1 increment vide order dated 15/01/2016, stoppage of increment of 1 year vide order dated 21/04/2016 and is also facing serious charges and, therefore, enquiry was initiated against him in which Enquiry Officer has been appointed. It is stated that only those Officers who were having good record and against whom no serious



charges were levelled have been considered for posting on promotion. Such is not the case with the applicant Shri Labde.

14. As per Government Resolution dated 02/04/1976 if a person is not under suspension, the competent authority should take a conscious decision after taking into consideration the nature of the charges levelled as to whether the person should be promoted without waiting for conclusion of the enquiry. If it is decided that such a person should be promoted, such promotion shall be provisional and will be reviewed on conclusion of the investigation or enquiry. If the decision in the departmental enquiry goes in favour of the applicant, such employee can be promoted according to his revised position in the select list. In view of the fact that if the departmental enquiry goes in favour of the applicants, the applicants will be entitled to claim deemed date of promotion with all consequential benefits and no prejudice will be caused to the applicants.

15. In view of the discussion in foregoing paras, it will be clear that the Government have taken a conscious decision to promote the applicants subject to pendency of the enquiry, considering the grave allegations against them in the departmental enquiry. The said decision is conscious and, therefore, it will not be proper for this Tribunal to interfere in the decision taken by the Government in not promoting the applicants or in declaring that their promotion will be subject to

outcome of the departmental enquiry. As already stated no prejudice will be caused to the applicants if they are not promoted during pendency of departmental enquiry and if they are exonerated in the departmental enquiry, they will be entitled to claim deemed date of promotion i.e. on the date on which their batch-mates are promoted and will be entitled to claim monetary benefits also. I, therefore, find no merit in the O.As. The Id. counsel for the applicant submits that the departmental enquiry against the applicant are pending since long. From the record it seems that enquiry officer has been appointed in the departmental enquiry in O.A. 585/2017. The applicants are on the verge of retirement, considering these aspects, it is accepted that the enquiry against the applicant may be concluded by the respondents as early as possible and in any case within six months from the date of this order. Hence the following order:-

**ORDER**

- 1) The O.A. 584/2017 and 585/2017, both stand dismissed.
- 2) No order as to costs.

**Dated :-04/01/2018**

**(J.D. Kulkarni)  
Vice-Chairman (J).**