

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 406 OF 2015

DISTRICT: - AURANGABAD

Prakash s/o Narayan Shrivastav,
 Age: - 61 years, Occu.: - Service (Retired),
 R/o. House no. 980,
 Shubhashree Colony, N-6, Cidco,
 Aurangabad.

.. APPLICANT

V E R S U S

- 1] The State of Maharashtra,
 Copy to be served on C.P.O.,
 M.A.T., Aurangabad.
- 2] The Additional Sales Tax Commissioner,
 Maharashtra State, Nashik.
- 3] The Joint Sales Tax Commissioner,
 Aurangabad Division, Near Railway Station,
 Aurangabad. .. RESPONDENTS

APPEARANCE : Shri A.D. Sugdare, learned Advocate for
 the applicant.
 : Smt. Deepali S. Deshpande, learned
 Presenting Officer for the respondents.

CORAM : **JUSTICE M.T. JOSHI, VICE CHAIRMAN**
AND
ATUL RAJ CHADHA, MEMBER (A)

DATE : **18th July, 2018**

J U D G E M E N T

(Per : Atul Raj Chadha, Member (A))

1. By filing the present O.A. the applicant claims following reliefs :-

- “A) By order or directions it may be declared that the caste validity certificate is not necessary for grant of second benefit to the applicant under Assured Career Progression Scheme.*
- B) By order or directions it may be declared the applicant is eligible for grant of second benefit as on 03.10.2008 under Assured Career Progression Scheme. When other employees have been given benefits.*
- C) By order or directions the letter dated 24.11.2014 issued by respondent no. 2 is illegal and deserves to be quashed and set aside.*
- D) By order or directions the respondent no. 2 and 3 be directed to grant second benefit under Assured Career Progression Scheme and pay arrears of salary and allowances with effect 03.10.2008 till realization of amount.*
- E) By order or directions the respondent no. 3 is directed to revise his pension taking into consideration the pay fixation on account of increase of salary and allowances due to second benefit under Assured Career Progression Scheme.”*

2. The Applicant has submitted that he belongs to OBC and passed SSC in 1974. He was appointed as a peon on 30.10.1984 as recommended by Social Welfare Department. The Applicant states though he belongs to OBC but was appointed against a clear vacancy from open category (Annex A1). He he passed

Marathi & English Typing Test in 1985. According to Government Resolution no RTR/1085/853 pk/72-85/13 dated 15th April 1991, he was eligible for appointment on Class III post after completion of three years service as per seniority. The Respondent no 2 was pleased to consider his representation and gave promotion on Class III post against Open Category on 05.02.1991 (Page 16 Anex A-2). The Applicant also claims that his appointment was against Open Category (Anex A2 & A3). The Applicant has worked for twelve years as peon and entitled for promotion as per Government Resolution dated 1st November 1995. The Respondent no 2 considered his promotion and by order dt 03.09.1997 granted time bound promotion along with other employees. The Respondent no 3 submitted a proposal for grant of second ACP on 22.02.2012, however, his name had not appeared in the order issued by Respondent no 2 . He has given various representations and Respondent no 2 replied on 16.08.2014 that his Caste Validity Certificate is not necessary and directed to produce the same. (A6). The main contention of the Applicant that as he was appointed against open category though he belongs to OBC , his caste validity is not necessary. He superannuated on 31st July 2012 and claims second ACP from 3.10.2008.

2. The Respondents have filed two affidavits first to oppose the Application and second with respect to specific query raised by the Tribunal vide order dated 06.12.2017. Main grounds are:

2.1) Though the candidate was appointed against the vacancy available for open category but as per Roaster Point Programme, he was appointed on a post Reserved for OBC which is reflected in the first page of service book i.e. “Kathar wani.”

2.2) As per his School Leaving Certificate His caste is shown as “Kathar Wani” (R5) and as per Tahsildar Kannad letter dated 04.12.1986 his caste is shown as “Kathar Wani” (page 60). Further, as per Marathwada Sudhar Mahasang (Maratwada), Aurangabad recommendation letter his caste was shown as “Kathar wani”

2.3) As per Government Resolution no BCC-1207/CR 53/08/16 -B dated 16.06.2008 (Page 62 & 63) and CBC -10/2010/CR 47/MVK-5 26th March 2010 (Page 64-67), and clause 13 of the clarification issued by the State Government dated 01.07.2011 ,it was essential to submit Caste Verification Certificate before promotion.

2.4) As per the prevailing Rules, he was required to furnish Caste Verification Certificate without which he could not have been promoted.

2.5) The applicant was aware that without caste validity certificate he could not have been promoted, which have been admitted by the applicant in the letter dtd. 30.8.2004 (Annex. R.2) which reads as under :-

“महोदय,

उपरोक्त विषयी सविनय सादर करण्यात येते की, संदर्भिय पत्रान्वये जात पडताळणीसाठी कागदपत्रे जमा करण्याचे ाम चालू असून सदरचे काम अनिश्चित कालावधीचे आहे.

त्यामुळे विनंती की, माझी जात प्रमाणपत्र पडताळणी होईपर्यंत यादीतील पुढील उमेदवारास पदोन्नती देण्यास माझी हरकत नाही.

कृपया अर्जाचा विचार सहानुभुतीपूर्वक करण्यात यावा हि विनंती.

आपला विश्वासू,

*सहि/--
पी.एन श्रीवास्तव
शिपाई.”*

2.6) The respondents further submit that in fact the promotion was given inadvertently and in fact was illegal and appropriate action will follow. The applicant was though directed to furnish caste validity certificate, but he has never submitted the same. The applicant is asking for deemed date of promotion w.e.f. 26.8.2008 or time bound pay scale. In fact, either of one is admissible. As admitted earlier the promotion to the applicant

was given for Class-III post as against Open category, which is inadvertently granted wrongly.

2.7) In fact, the first time bound pay scale could not have been extended. In fact, the applicant belongs to O.B.C. category, which is also stated from school leaving certificate, caste certificate, letter from Magasvargia Sudhar Mahasangh (Marathwada), Aurangabad (Annex. R.5). While promoting the applicant as Clerk on 5.2.2011, it was not brought to the notice of local committee that the applicant is belonging to O.B.C. category and his caste certificate is not verified.

2.8) The respondents also submitted that in order to sustain and maintain sanctity and solemnity of the proceedings in law courts it is necessary that applicant / petitioner should not make false or knowingly, inaccurate statements or misrepresentation and / or should not conceal material facts with a design to gain some advantage or benefit at the hands of the court, when a court is considered as a place where truth and justice are the solemn pursuits. If petitioner attempts to pollute such a place by adopting recourse to make misrepresentation and is concealing material facts it does so at their risk and cost. Such petitioner must be ready to take consequences that follow on account of its

own making. At times, lenient or liberal or generous treatment by court in dealing with such matters are either mistaken or lightly taken instead of learning proper lesson. Hence, there is a compelling need to take serious view in such matters to ensure expected purity and grace in the administration of justice.

3. In our view, it is not correct that the Applicant was not required to submit the Caste Verification Certificate in fact his promotion was also illegal due to inadvertent mistake as his appointment was made against roaster point meant for OBC and the Applicant was aware of the fact that it was essential to submit Caste Verification Certificate. The original application is required to be dismissed. Since the applicant is now retired, we do not propose to take strict view. Hence, the following order :-

ORDER

Original Application is dismissed without any order as to costs.

(ATUL RAJ CHADHA)
MEMBER (A)

(M.T. JOSHI)
VICE CHAIRMAN

Place : Aurangabad
Date : 18th July, 2018

ARJ O.A.NO.406-2015 (D.B.) SALARY-PENSION (HON. CHADHA)