

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 4 OF 2024**

**DISTRICT:- AURANGABAD**

**Savita Sidgonda Birge (Wadiyar),**

Age-54 years, Occu. Education

Officer, (Primary), Zilla Parishad,

Nanded, District Nanded.

R/o. Sai Ashish Chatrapati Nagar,

Purna Road, Nanded.

District Nanded.

.. **APPLICANT**

**V E R S U S**

**01. The State of Maharashtra,**

Through its Principal Secretary,

School Education and Sports

Department, Madam Cama Road,

Hutatma Rajguru Chowk,

Mantralaya, Mumbai-400032.

**02. The Divisional Commissioner**

**(Education),** Commissionerate of

Education, Central Building,

Dr. Annie Beasant Road,

Maharashtra State, Pune-411001. .. **RESPONDENTS**

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APPEARANCE : Shri V.B. Wagh, learned counsel for  
the applicant.

: Shri V.R. Bhumkar, learned Presenting  
Officer for the respondent authorities.

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**CORAM : JUSTICE SHRI P.R. BORA, VICE CHAIRMAN  
AND  
: SHRI VINAY KARGAONKAR, MEMBER (A)**

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**DATE : 23.08.2024**  
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**ORAL ORDER**

(Per : Justice Shri P.R. Bora, Vice Chairman)

Heard Shri V.B. Wagh, learned counsel for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for the respondent authorities.

2. In the present Original Application the applicant has raised the grievance that she has been denied the promotion only on the ground that the criminal prosecution as well as departmental enquiry is pending against her. The applicant is working on the post of Education Officer, Group-A and she claims to be eligible for to be promoted to the post of Deputy Director of Education. It is the contention of the applicant that for the first time she was considered for her promotion in the year 2021 in the DPC meeting held on 29<sup>th</sup> October, 2021. However, since at the relevant time the criminal prosecution as well as departmental enquiry were pending against her, she was declared eligible to be promoted and her report was kept in sealed cover. It is the further contention of the applicant that even in the DPC meeting held in the next year i.e. 2022 and thereafter on 7<sup>th</sup> August, 2023, she has been denied promotion on the same ground and her reports are still in the sealed cover.

3. Learned counsel Shri V.B. Wagh appearing for the applicant submitted that in view of the Government Resolution dated 15.12.2017 and more particularly clause 9 thereof, in case the criminal prosecution against the Government employee or D.E. against him/her continues for a longer period and is not completed even after expiry of the period of 02 years from the date on which the sealed cover procedure was adopted in respect of the said employee, the sealed cover is to be opened and accordingly further process is to be undertaken. If in the report, the concerned employee is held eligible and fulfills all the requirements for to be promoted on the next higher post, ad hoc promotion can be given to the said employee subject to outcome of criminal prosecution and/or the departmental enquiry initiated against the said employee.

4. Learned counsel appearing for the applicant submitted that in the case of the applicant the period of 02 years has expired and despite that her report is kept in the sealed cover and consequently she has been deprived from the promotion to the post of Deputy Director of Education. The applicant in the circumstances, has prayed for direction against the respondent authorities to open the sealed cover and if the applicant is noticed to be held eligible for her promotion grant

her ad hoc promotion to the next higher post subject to outcome of the departmental enquiry as well as criminal prosecution pending against her.

5. Respondent No. 1 has submitted affidavit in reply and has opposed the prayers made in the O.A. and denied the objections raised in the O.A. It is contended that the applicant was trapped while accepting bribe of Rs. 4,00,000/- (Rs. Four lacks) and has thus facing prosecution under the Prevention of Corruption Act. It is further contended that the applicant remained in Police custody for more than 48 hours and so she was required to be suspended on 30.05.2017. In the affidavit in reply the respondent has further contended that the Government has given sanction for prosecution against the applicant on 27<sup>th</sup> February, 2018 and the said Criminal Case bearing No. 4/2018 is pending before the Court of District and Sessions Judge at Nanded. It is further contended that the applicant is also guilty of dereliction of duty and hence disciplinary action is also pending against the applicant. In the circumstances, the respondent has opposed for accepting the prayer made in the O.A.

6. We have duly considered the submissions made on behalf of the applicant, as well as, the respondents i.e. State

authorities. The State has not denied that the applicant was considered for her promotion in the DPC meeting held on 19<sup>th</sup> October, 2021 and the report in her respect was directed to be kept in sealed cover. It is further not in dispute that in DPC meeting held in the year 2022 the applicant was not considered for her promotion and the procedure for opening sealed cover was not adopted.

7. The pleadings and the documents on record reveal that in the DPC meeting held on 7<sup>th</sup> August, 2023 also the applicant was considered for her promotion being in zone of consideration for promotion to the next higher post. The minutes of the said meeting demonstrate that the applicant has not been considered for promotion to the post of Deputy Director of Education on the ground that criminal prosecution is pending against her as well as the departmental enquiry proceedings are initiated against her.

8. The Government Resolution dated 15.12.2017 lays down the procedure to be adopted in the matters of grant of promotion in the event the criminal prosecution or departmental enquiry is pending against the Government servant. The said G.R. has taken into account all contingencies and has provided the modality to be adopted in such events. As

per clause 9 of the said G.R. if no progress is seen in the departmental enquiry against the employee or in criminal prosecution initiated against him, the employer has to take review of case and take a conscious decision in regard to the promotion of such employee considering the parameters laid down under the said Government Resolution.

9. The materials on record reveal that no progress has occurred in the departmental enquiry as well as criminal prosecution against the applicant though the period of more than 02 years has lapsed. In the circumstances, the applicant has certainly made out a case for applying the provisions under the Government Resolution dated 15<sup>th</sup> December, 2017 in his case. Hence, the following order: -

### **ORDER**

(i) The competent authority shall as provided under Clause 9 of the Government Resolution dated 15<sup>th</sup> December, 2017 shall take a conscious decision whether to grant ad-hoc promotion to the applicant taking into account the pointes which are enumerated under the said clause 9 and also considering the provisions under clauses 10 & 11 of the said Government Resolution within the period of 04 weeks from the date of this order.

(ii) The Original Application stands disposed of in the aforesaid terms, however, without any order as to costs.

**MEMBER (A)**

**VICE CHAIRMAN**

O.A.NO.4-2024(DB)-2024-HDD-Promotion