

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 962 OF 2017
(Subject:- A.C.P.S.)**

DISTRICT:- LATUR

Bhausahab Baburao Rayate,)
Age : 60 Years, Occu : Service,)
R/o. Near Swami Samarth School,)
MSEB Colony, Prakash Nagar Latur,)
Tq. & Dist. Latur.) **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
(Through the Secretary,)
Technical Education Department,)
Mantralaya, Mumbai).)
2. **Director of Technical Education,**)
3, Mahapalika Marg, Mumbai.)
3. **Joint Director of Technical Education)**
Bhadkal Gate, Aurangabad.)
4. **The Principal,**)
Industrial Training Institute,)
Shivaji Chowk, Latur.) **RESPONDENTS**

APPEARANCE : Shri A.S. Bayas, learned counsel for
the applicant.

: Shri D.M. Hange, learned Presenting
Officer for the respondent authorities.

CORAM : **Hon'ble Justice Shri V.K. Jadhav, Member (J)**

RESERVED ON : **03.07.2024.**

PRONOUNCED ON : **10.09.2024.**

ORDER

Heard Shri A.S. Bayas, learned counsel for the applicant and Shri D.M. Hange, learned Presenting Officer for the respondent authorities.

2. By filing this Original Application the applicant is seeking directions to the respondents to pay him the benefit of Assured Progressive Scheme, time scale promotion and stagnancy increment to which he is entitled for. The applicant is also seeking directions to the respondents to submit the proposal for increase of pensionary benefits on account of giving the benefit of Assured Progressive Scheme and other applicable benefits to the concerned authority. The applicant is also seeking directions to the respondents to pay the difference of pay scale and other benefits to which the applicant is entitled with the interest of Rs. 12% per annum.

3. Brief facts giving rise to this Original Application are as follows:-

(i) The applicant was appointed on the post of Store Clerk in the year 1978 by the respondents. The appointment order was issued by the Deputy Director of Technical Education,

Aurangabad. The applicant was posted as Store Clerk at Government Technical School Vaijapur against the newly created post by G.R. dated 04.08.1978. The copy of appointment order dated 11.09.1978 is marked as Annexure 'A-1'. The applicant was given the promotion on the post of Storekeeper by order dated 24.02.1984. The said order of promotion is marked as Annexure 'A-2'.

(ii) It is the further case of the applicant that he was continued on the post of Storekeeper since 1984 till the date of his retirement. The applicant had rendered more than 36 years of service in the department and out of that he has worked about 30 years on the same post i.e. Storekeeper. There is no further promotion channel available and therefore, the applicant continued on the same post till his retirement on attaining the age of superannuation i.e. 30.06.2014.

(iii) The applicant further contends that the applicant has not been given either the time scale promotion neither any stagnancy increment to which he is entitled for. Hence, this Original Application.

4. Learned counsel for the applicant submits that the Government had announced the policy with the name of "Assured Progressive Scheme" in terms of the decision dated 20.07.2001. The object of the said scheme is to give benefit to such an employee who has completed more than 12 years of service on the same post and does not have any opportunity of further promotion. Learned counsel for the applicant submits that the Government of Maharashtra again by G.R. dated 31.08.2009 has rectified the policy and granted the stagnancy increment by way of additional pay scale in the original pay scale.

5. Learned counsel for the applicant submits that by G.R. dated 01.04.2010 followed by another G.R. dated 05.07.2010, the benefit of Assured Progressive Scheme was made applicable to the isolated post. The case of the applicant is fully covered by the above referred decision and the applicant is entitled for the benefit of Assured Progressive Scheme as well as the benefit of stagnancy increment.

6. Learned counsel for the applicant submits that the applicant was retired on 30.06.2014 on attaining the age of superannuation. However prior to his retirement the

applicant has submitted the representation to the Principal Industrial Training Institute (I.T.I.), Latur by which he has requested that he has completed 24 years of service on the same post and he may be given the time scale promotion. He has also requested to the Principal to submit the proposal to that effect. The copy of the said representation dated 04.11.2011 is marked as Annexure 'A-5'. In view of the said representation and considering the fact that the applicant is entitled for the time scale promotion, the respondent No.4 – Principal, I.T.I., Latur has forwarded the proposal of the applicant for giving him the benefit of Assured Progressive Scheme. In fact the Principal has first time forwarded the proposal on 21.01.2012 followed by another letter dated 01.10.2013. Further the respondent No.4 - Principal, I.T.I., Latur has again on 20.04.2015 has intimated to the respondent No.2 that the proposal for grant of benefit of Assured Progressive Scheme in respect of the applicant has already been forwarded with necessary recommendation. The said communication dated 20.04.2015 is marked as Annexure 'A-7'. In response to the said communication dated 20.04.2015, the respondent No.2 has informed to the respondent No.4- Principal, I.T.I., Latur that in order to give

the benefit of Assured Progressive Scheme, the applicant is required to submit the Caste Validity Certificate after his retirement.

7. Learned counsel for the applicant submits that in fact the applicant was never appointed against reserved seat nor any benefit of reservation was given to him during his service tenure. His caste is however recorded in the service book and therefore, the respondent has asked him to submit the Caste Validity Certificate in order to give him the benefit of Assured Progressive Scheme. Learned counsel for the applicant submits that there is no requirement in the said scheme that the employee should submit Caste Validity Certificate. In fact the said benefits are given on the basis of number of years of service rendered by the employees.

8. Learned counsel for the applicant submits that the applicant has again submitted the representation dated 10.12.2015 to the Joint Director informing therein that the number of similarly situated employees have been given the benefit of Assured Progressive Scheme without asking them to submit the Caste Validity Certificate. The applicant has also referred the order dated 21.07.2011 passed by the Joint

Director in respect of similarly situated employees. In clause No. 10 of the said order dated 21.07.2011 it is specifically mentioned that in order to give the benefit of Assured Progressive Scheme, the Caste Validity Certificate is not required. The copy of the said order dated 21.07.2011 is marked as Annexure 'A-9' collectively.

9. Learned counsel for the applicant submits that inspite of receipt of communication from the applicant, the respondents have not communicated anything nor granted the benefit of Assured Progressive Scheme to the applicant. The applicant time and again submitted the representation dated 21.05.2016 and renewed his request. However, no decision has been taken. Learned counsel for the applicant submits that this Original Application deserves to be allowed in terms of the prayer clauses made therein.

10. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent Nos. 1, 2 and 4 submits that the name of the applicant is at Sr. No. 1 in the seniority list of the Storekeeper which was published on 08.10.2013 and in this list his caste is shown as Scheduled Tribe. Learned Presenting Officer submits that in terms of

the G.R. dated 01.07.2011 in order to clear the doubts to implement the revised Assured Progressive Scheme, the Government had given common explanation orders in this regard. The said G.R. dated 01.07.2011 in which the explanation is given is marked as Exhibit 'R-1' collectively. The said explanation is about as to whether the Caste Validity Certificate is required to be submitted, wherein the explanation is given that the same is necessary for grant of Assured Progressive Scheme to the Backward Class candidates. In the seniority list the name of the applicant is shown at Sr. No.1 and his category is shown as S.T. category. Thus when the proposal of the applicant of the said scheme was received by the respondent office, it was communicated to the applicant to submit the Caste Validity Certificate to sanction the said proposal. However, the applicant has not complied with the same. Learned Presenting Officer submits that there is no substance in the Original Application and the same is liable to be dismissed.

11. Learned counsel for the applicant on the basis of rejoinder affidavit submitted by the applicant submits that the applicant was appointed on the post of Store Clerk by an order dated 20.09.1978. He was never appointed against the

reserved category. Even his appointment does not indicate that he was appointed against the reserved category. However, while preparing the service book, in the column of caste his caste is recorded as "Koli Mahadev". The applicant has not obtained any benefit of Scheduled Tribe category during his entire service tenure. Learned counsel for the applicant submits that the applicant is entitled for the benefit of Assured Progressive Scheme as per the policy decision of 20.07.2001 and 30.08.2009 respectively.

12. Learned Presenting Officer in response to the same submits that the applicant's contention that he was never appointed against the reserved category is false information. In terms of paragraph No. 3 of the Government Resolution, General Administration Department dated 19.09.1975, the name of the applicant has appeared at Sr. No. 84 and his category is shown as Scheduled Tribe category. The said G.R. dated 19.09.1975 is marked as Exhibit 'R-1' collectively. Further, in the seniority list of Store Keeper published by the respondent office, the category of the applicant was also shown as S.T. category. The applicant has not raised any objection regarding his category. The seniority list dated 31.12.2012 is annexed and marked as Exh. 'R-2'

collectively. The applicant has not submitted his Caste Validity Certificate as per the caste claim and therefore, he did not obtain any benefit of Scheduled Tribe category during his entire service tenure.

13. The applicant was initially appointed as a Store Clerk at Government Technical School, Vaijapur against the newly created post in terms of G.R. dated 04.08.1978. The applicant thereafter was given the promotion on the post of Storekeeper by order dated 24.02.1984. He was continued on the said post of Storekeeper since 1984 till the date of his retirement. Undisputedly the applicant had rendered more than 36 years of service in the department and out of that he has worked about 30 years on the same post i.e. Storekeeper. There is no further promotion channel available. Thus the applicant continued on the same post till his retirement on attaining the age of superannuation i.e. 30.06.2014. The applicant has not given either the time scale promotion or any stagnancy increment.

14. The Government had announced the policy with the name of "Assured Progressive Scheme" in terms of the decision dated 20.07.2001. The object of the said scheme is

to give the benefit to such an employee who has completed more than 12 years of service on the same post and does not have any opportunity of further promotion. Further the Government of Maharashtra has issued another G.R. dated 31.08.2009 thereby rectified the earlier policy and granted the stagnancy increment by way of additional pay scale in the original pay scale. Further by G.R. dated 01.04.2010 followed by another G.R. dated 05.07.2010, the benefit of Assured Progressive Scheme was made available to the isolated post. The case of the applicant is covered by the above referred decision. However, the respondents have turned down the claim of the applicant solely on the ground that the applicant has not produced the caste validity certificate which is required in terms of the explanatory G.R. dated 01.07.2011 issued by the Government in this regard. Thus when the proposal of the applicant of the said scheme was received by the respondents office, it was communicated to the applicant to submit the caste validity certificate to sanction the said proposal. The applicant has not complied with the same. Hence, he was not granted the benefits.

15. It is the case of the applicant that he was never appointed on the post of Store Clerk by order dated 20.09.1978 against the post of reserved category. Even his appointment does not indicate that he was appointed against the reserved category. However, while preparing the service book, in the column of caste his caste is recorded as "Koli Mahadev". The applicant has never obtained the benefit of Scheduled Tribe category during his entire service tenure.

16. Having gone through carefully the appointment order 11.09.1978 (Annexure 'A-1') it appears that the Deputy Director of Technical Education, Marathwada Regional Office, Aurangabad has appointed the applicant and issued posting order. It further appears that the applicant came to be selected by the State Selection Board with effect from the date of joining of his duties. The applicant's name is at Sr. No. 2. He is appointed as a Store Clerk (Store Keeper) against the newly created post vide G.R. dated 04.07.1978 and posted at Government Technical High School Centre, Vaijapur. It is nowhere mentioned in the appointment order that the applicant was appointed on the post of Store Clerk in the reserved category. The applicant came to be appointed as

Store Clerk on the basis of selection by the State Selection Board. Thus there should have been record available to indicate that the appointment of the applicant was on the post falling in the reserved category.

17. The applicant was promoted as a Store Keeper by order dated 24.02.1984. There is no dispute that the applicant was finally retired in the year 2014 on the same post of Store Keeper. It further appears that only on the basis of entry about his tribe in the service book the applicant is required to be produced the caste validity certificate. It is not disputed by the respondents that the applicant was never obtained benefit of Scheduled Tribe category during his entire service tenure. It is the say of the respondents that in terms of G.R. dated 01.07.2011 the applicant is not entitled for the said benefit in absence of the caste validity certificate. Admittedly in the earlier G.R. there is no such reference. On the other hand, even in paragraph No. 10 of the proposal submitted on 21.01.2012 in connection with the Store Keeper working in the department, it is specifically stated that the caste validity certificate is not required and therefore, the

higher pay scale is granted under the Assured Progressive Scheme.

18. So far as the G.R. dated 19.09.1975 is concerned on which the respondent authorities relied upon, it is about extending the benefit of permanency to the temporary Government servants. The Government is pleased to direct that every Government servant who has rendered continuous service for not less than three years in a post or posts including in a cadre should be deemed to be a permanent Government servant for all purposes subject to three conditions. The condition No.1 is relevant for the present discussions. As per the condition No.1 the original appointment of the Government servant concerned to the respective post or cadre must have been made in conformity of the relevant recruitment rules and the prescribed method of recruitment. On perusal of Annexure 'A' page No.79 of granting permanency to the employees including the applicant it appears that the same is in respect of the post to which the employees were appointed by direct recruitment. There is column No.3 specifying the category. However, on the basis of the same it cannot be inferred that the applicant

was appointed in the reserved category meant for Scheduled Tribe category. Even in the seniority list though the category is mentioned as Scheduled Tribe category, the same does not indicate that the applicant came to be appointed against the reserved category. Even on 01.10.2013 (Annexure 'A-6') the respondent- Principal Industrial Training Institute (I.T.I.), Latur has forwarded the proposal of the applicant for granting him the benefit of Assured Progressive Scheme to the Joint Director, Vocational Education and Training, Regional Office, Aurangabad.

19. I have carefully gone through the explanatory G.R. dated 01.07.2011 issued by the Government in this regard. Point No. 13 of Annexure 'A' of the said G.R. dated 01.07.2011 is about as to whether the Caste Validity Certificate is required to be submitted for grant of Assured Progressive Scheme and the explanation is given that the same is essential in respect of the Backward Class candidates. There is no dispute that the applicant came to be appointed as a directly recruited candidate and it was easy for the respondent authorities to place before this Tribunal the documentary evidence indicating that the selection of the

applicant was from the reserved category. In the peculiar facts of the present case merely on the basis of caste/tribe of the applicant mentioned in the service book is not the decisive factor to deny him the benefit of Assured Progressive Scheme which he is otherwise entitled for. In my considered opinion, the applicant's case is fully covered by the G.Rs. dated 20.07.2001 and 31.08.2009. The applicant is entitled for the benefit of Assured Progressive Scheme. Hence, the following order:-

ORDER

- (i) The Original Application No. 962 of 2017 is hereby allowed.
- (ii) The respondents are hereby directed to pay the applicant the benefit of Assured Progressive Scheme, time scale promotion and stagnancy increment and submit the proposal for increase of pensionary benefit on account of giving the benefit of Assured Progressive Scheme and other applicable benefits to the concerned authority as expeditiously as possible.

- (iii) The respondents are hereby further directed to pay the difference of pay scale and other benefit to which the applicant is entitled for.
- (iv) In the circumstances, there shall be no order as to costs.
- (v) The Original Application is accordingly disposed of.

MEMBER (J)

Place:-Aurangabad
Date : 10.09.2024
SAS O.A. 962/2017(S.B.) A.C.P.S.