

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NOS 1138, 1139 & 1146 OF 2018

DISTRICT : PUNE

1. ORIGINAL APPLICATION NO. 1138 OF 2018

Pushpalata Suryabhan Pawar,)
Retd. Divisional Secretary,)
Secondary & Higher Secondary Educational)
Board at Kolhapur. R/o: 315-316,)
Gururaj Apartment, Vitthal Mandir Lane,)
2nd floor, Flat no. 10, Navi Peth, Pune.)...**Applicant**

Versus

1. The State of Maharashtra)
Through its Secretary,)
School Education and Sports Dept,)
Madam Cama Marg, Hutatma Rajguru)
Chowk, Mantralaya, Mumbai 400 032.)
2. Commissioner [Education],)
State of Maharashtra,)
Central Bldg, Pune 411 001.)
3. Director of Education,)
Directorate of Secondary and Higher)
Secondary Education, State of)
Maharashtra, Central Bldg,)
Pune 411 001.)...**Respondents**

2. ORIGINAL APPLICATION NO. 1138 OF 2018

Shri Suresh s/o Bapuji Kulkarni,)
Retd. Dy Director of Education,)
R/o: Banashankari Niwas, Krushna Nagar,)
Near Water Tank [New], Mangalvedha,)
Tal-Mangalvedha, Dist-Solapur.)...**Applicant**

Versus

1. The State of Maharashtra)
Through its Secretary,)
School Education and Sports Dept,)
Madam Cama Marg, Hutatma Rajguru)

- Chowk, Mantralaya, Mumbai 400 032.)
 2. Commissioner [Education],)
 State of Maharashtra,)
 Central Bldg, Pune 411 001.)
 3. Director of Education,)
 Directorate of Secondary and Higher)
 Secondary Education, State of)
 Maharashtra, Central Bldg,)
 Pune 411 001.)...**Respondents**

3. ORIGINAL APPLICATION NO. 1146 OF 2018

- Mr Maruti Krishna Gondhali)
 Retd. Dy Director of Education,)
 R/o: Kalikapuram, Row House No. 3,)
 Jawahar Nagar, Mangalwar Peth, Kolhapur)...**Applicant**

Versus

1. The State of Maharashtra)
 Through its Secretary,)
 School Education and Sports Dept,)
 Madam Cama Marg, Hutatma Rajguru)
 Chowk, Mantralaya, Mumbai 400 032.)
 2. Commissioner [Education],)
 State of Maharashtra,)
 Central Bldg, Pune 411 001.)
 3. Director of Education,)
 Directorate of Secondary and Higher)
 Secondary Education, State of)
 Maharashtra, Central Bldg,)
 Pune 411 001.)...**Respondents**

Shri Manoj Harit a/w Akhil Kupade learned advocate for the Applicant.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : **Shri P.N Dixit (Vice-Chairman) (A)**

DATE : **14.08.2019**

ORDER

1. Heard Shri Manoj Harit a/w Akhil Kupade learned advocate for the Applicant and Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents

Brief facts are as follows:-

2. The applicants superannuated from the post of Deputy Director of Education on 31.5.2018. On 31.5.2018 the applicants were relieved from their post, received orders of superannuation and received orders of their promotion to the post of Divisional Chairman. The places where they were posted were distant and it was not physically possible for them to join at those places. After retirement the applicants represented on 9.7.2018 to Respondent no. 2 to grant them deemed date of promotion along with necessary benefits of the promoted post, overlooking the fact that they could not join the promotional post as it was physically not possible.

3. On 15.9.2018, Respondent no. 2 communicated the impugned order rejecting their representations. The relevant portion of the impugned order is as under:-

“शासनाच्या दिनांक ३१.०५.२०१८ शासन निर्णयान्वये शिक्षण उपसंचालक व समकक्ष पदावरून शिक्षण सहसंचालक पदावर पदोन्नती देण्यात आली आहे. त्यानुसार आयुक्त (शिक्षण) यांनी त्यांच्या दिनांक ३१.०५.२०१८ च्या कार्यालयीन आदेशान्वये संबंधित अधिका-यांना पदोन्नतीच्या पदी रुजू होण्यासाठी कार्यमुक्त केले आहे. सदर पदोन्नतीमधील श्री. सुरेश बा. कुलकर्णी, श्री. मारुती कृ. गोंधळी व श्रीमती पुष्पलता सु. पवार हे अधिकारी पदोन्नतीच्या आदेशाच्या दिवशीच दिनांक ३१.०५.२०१८ रोजी नियत वयोमानानुसार सेवानिवृत्त झाले. सबब, या ३ अधिका-यांना तांत्रिक कारणामुळे पदोन्नतीच्या पदावर रुजू होणे शक्य झालेले नाही. तथापि, केवळ या कारणास्तव पदोन्नतीच्या लाभापासून वंचित न ठेवता पदोन्नतीचे आदेशाचे दिनांकापासून मानीव पदोन्नती देण्याबाबतची विनंती उक्त तीन अधिकारी यांनी केली आहे.

२. श्रीमती. पुष्पलता सु. पवार, श्री. सुरेश बी. कुलकर्णी व श्री. मारुती कृ. गोंधळी सेवानिवृत्त शिक्षण उपसंचालक यांना तांत्रिक कारणामुळे पदोन्नतीच्या (शिक्षण सहसंचालक) पदावर रुजू होणे शक्य झालेले नाही. तरी, त्यांना पदोन्नतीचे आदेशाचे दिनांकापासून मानीव पदोन्नत झाले, असे समजून पदोन्नतीचे सर्व लाभ देण्यात यावे किंवा कसे, याबाबत अभिप्राय देण्याची विनंती सामान्य प्रशासन विभागास करण्यात आली होती. विभागाच्या प्रस्तावाच्या अनुषंगाने सामान्य प्रशासन विभागाने पुढील प्रमाणे अभिप्राय दिले आहेत.

“ पदोन्नतीच्या मानीव दिनांकाच्या विहित निकषांनुसार शासन सेवेतील कर्मचारी/अधिकारी यांना ते ज्येष्ठ व पात्र असूनही पदोन्नतीच्या संदर्भात डावलेले गेले असल्याचे निश्चित झाले तर त्यांना पदोन्नतीचा मानीव दिनांक देण्याबाबत विचार करण्यात येतो. विचाराधीन प्रकरणी अशी परिस्थिती नसून संबंधित अधिकारी दि. ३१.०५.२०१८ रोजी नियत वयोमानानुसार सेवानिवृत्त झाले असून पदोन्नती आदेश उशीरा प्राप्त झाल्याने त्याच दिवशी पदोन्नती मिळूनही ते पदोन्नतीच्या पदावर रुजू होऊ शकले नाहीत. सबब, सदर प्रकरण मानीव दिनांकाच्या

निकषांमध्ये बसत नसल्याने तसेच मानीव पदोन्नती देण्याबाबत कोणतीही तरतूद विद्यमान नियमांमध्ये नसल्याने उक्त ३ अधिका-यांना असा लाभ देता येत नाही.”

४. तरी, सामान्य प्रशासन विभागाचे उक्त अभिप्राय पाहता श्रीमती. पुष्पलता सु. पवार, श्री. सुरेश बी. कुलकर्णी व श्री. मारुती कृ. गोंधळी सेवानिवृत्त शिक्षण उपसंचालक यांना मानीव पदोन्नतीचे लाभ देण्याबाबतची त्यांची विनंती मान्य करता येणार नाही”.

(Quoted from pages 12 & 13 of the O.A)

4. Aggrieved by the impugned order, the applicants have made following prayer:-

“8(2) Direct the Respondents to grant this applicant a deem date promotion in pursuance to the promotion order dated 31.5.2018 (Ann.A-3) from the date when the promotional post of Divisional Chairman, Secondary and Higher Secondary Educational Board, Konkan Division, Ratnagiri fell vacant and calculate the pension and the pensionary benefits accordingly AND/OR from the date when the applicant became entitled for promotion i.e. 30.10.2015 as there were many posts vacant on the said date.”

(Quoted from pages 8 & 9 of the O.A)

Submission by Applicants:-

5. In support of the same, the applicant has furnished following grounds:-

- (i) The post on which the applicants were promoted were vacant since 30.10.2015, but were not filled in expeditiously.
- (ii) The applicants were posted to far-off places which was physically impossible to cover in few hours.
- (iii) It is submitted that, the Respondent-State vide its impugned decision dated 15.9.2018 (Ann. A-1) had totally misconceived the parameters for grant of deem date of promotion. In the said impugned decision the Respondents had accepted that the said promotion order was received late by this applicant and therefore she could not join the promotional post. What was lost sight of by the Respondents while taking the impugned decision was that, the provisions for granting deem date promotion does not

expect the Government employees to undertake impractical and impossible task and therefore, in the present special circumstances as with the applicant the Respondent State should have decided to grant deem date promotion to this applicant along with all consequential benefits.

(Quoted from page 7 of the O.A)

- (iv) The impugned decision has deprived the applicant of her legitimate claim, both legal as well moral. The State ought not to be permitted to mete out unfair, unjust and unconscionable treatment to a civil servant who has spent her life in exemplary public service.

(Quoted from page 8 of the O.A)

6. According to the applicants, the impugned order is arbitrary, unjust and in colorable exercise of powers, illegal and therefore, in violation of Art. 14 of the Constitution of India. (xiv. Grounds Ann-A-1, page 6 of O.A)

7. Learned advocate for the applicant placed reliance on the judgment of the Central Administrative Tribunal, Kolkata Bench, Sunil Bhattacharya Vs. Union of India (Uoi) and Anr, dated 2nd March, 2000. The relevant portion is as under:-

“16. An analysis of Articles 14, 16 and 21 as above and also the preamble of the Constitution of India, clearly shows social justice is the main thrust which includes upliftment of employees, as well, which includes the consideration of an employee for promotion at the appropriate time. Therefore, it is mandatory on the part of the authorities to discharge its duties at the appropriate time, unless the reasons are beyond their control, because even one day’s loss in the service career of an employee on promotion cannot be compensated at any time. As per the saying that “Justice delayed is Justice denied”, “Promotion delayed is Promotion denied”. In our view the State has to bear the responsibility for the loss of span of life in the promotion post and the State has to be accountable for the same, i.e. not holding the CPC in time.”

8. Learned advocate for the applicants contended that the applicants have fundamental right to get their promotion from the date the vacancies arose and denying the same is breach of their rights.

Submission by the Respondents:-

9. Respondent no. 1 has filed affidavit in reply as well as sur-rejoinder, contesting the submissions made by the applicants. The affidavit states as under:-

8. (i) The Establishment Board 2 under the Chairmanship of Additional Chief Secretary (Services), General Administration Department, in its meeting held on 24.5.2018, given approval to fill 8 posts of Joint Director of Education by temporary promotion. The General Administration Department communicated the decision of Establishment Board-2, vide letter dated 25.5.2018. The copy of said letter dated 25.5.2018 is annexed herewith and marked as **Exhibit R-1**.

(ii) The letter dated 25.5.2018 issued by General Administration Department was received by School Education Department on 28.5.2018. On the same day, the respondent no. 1 issued a letter to the Commissioner of Education, who is respondent no. 2 in the present O.A. By the said letter, the choice of revenue division of the officers eligible for promotion on the post of Jt. Director was sought. The Commissioner of Education has responded the letter and on the second day i.e. on 29.5.2018, submitted the choice of revenue division of the officers who are in the select list of promotion for the post of Joint Director of Education.

(iii) On the same day, i.e. on 29.5.2018 the Civil Service Board meeting was called. In the said meeting, the revenue division was allotted to the officers under consideration as per rules namely "Revenue Division Allotment for appointment by nomination and promotion to the posts of Group "A" and Group "B" (Gazetted and Non-Gazetted) of the Government of Maharashtra (Second Amendment) Rules, 2017" issued on 15th June, 2017 (In short called as Revenue Division allotment rules).

(iv) The Civil Service Board in its meeting recommended the posting on promotional post of Joint Director of Education. The copy of minutes of Civil Service Board held on 29.5.2018 is annexed herewith and marked as **Exhibit R-2**.

(v) Thereafter, the recommendations of the Civil Service Board were submitted to the Appointing Authority and the Appointing Authority approved the recommendations of the Civil Service

Board. The copy of note sheet is annexed herewith and marked as **Exhibit R-3**.

(vi) Then, the promotion order on the post of Joint Director of Education was issued on 31.05.2018. The copy of said G.R. dated 31.5.2018 is annexed by the applicant as Exhibit A-3. Thereafter, the Commissioner of Education issued an order dated 31.5.2018 relieving the officers promoted on the post of Joint Director of Education. The copy of said order is annexed by the Applicant as Annexure A-4.

(vii) Considering all above sequence, the contention of the applicant that the applicant as well as other promotees could have been promoted much earlier and before 31.5.2018, so that, the promotees such as the applicant could have worked on the said post for a considerable period of time, is not correct and is denied.

10 (i) Therefore, the promotion of the applicant on the post of Deputy Director is of temporary in nature. Therefore, it is not correct to say that the applicant was eligible and qualified for promotion to the said post since 30.10.2015. Hence, the contention of the applicant in the said para is not correct and is denied.

11. With reference to contents of paragraph No. 6(ix), I say as follows : The promotion of the applicant on the post of Deputy Director of Education was of temporary in nature. The date of regular promotion on the post of Deputy Director of Education is yet not finalized. The High Court of Bombay in Civil Writ Petition no. 2797/2015 and in connected matters, on 4.8.2017 has struck down the GR dated 25 May, 2004 and also directed to take necessary corrective steps/ measures in respect of promotions already granted. Against the said orders of the Hon'ble High Court of Bombay, the State Govt. has filed Special Leave Petition no. 28306/2017 before the Hon'ble Supreme Court of India. The said petition is pending before the Hon'ble Supreme Court of India. The date of regular promotion shall be finalized only after the final judgement of the Hon'ble Supreme Court of India.

(i) In the circumstances stated above, the applicant cannot be said to be eligible for the promotion since long back. Though, the applicant has retired on 31.5.2018 and the order of temporary promotion on the post of Joint Director of Education is of temporary nature. After the final decision in SLP no. 28306/2017 pending before the Hon'ble Supreme Court of India, the date of regular promotion can be given to the applicant and all the officers

who were promoted temporarily or on ad hoc basis, as per orders of Hon'ble Supreme Court of India.

12(ii) It is further submitted that the date of promotion is determined as per rule 32 of Maharashtra Civil Services (General Conditions of Services) Rules, 1981. The said rule is reproduced below:-

“The promotion of a Government Servant from a lower to higher post, his duties remaining the same, takes effect from the date on which the vacancy occurs, unless it is otherwise ordered. But when the promotion involves the assumption of a new post with enlarged responsibilities, the higher pay is admissible only from the date on which the duties of the new post are taken.”

(iii) That, the post of Joint Director of Education is a post of enlarged responsibilities and the applicant has not joined the said promotional post as well as the applicant has not performed enlarged responsibilities. Hence, higher pay applicable to the promotional post is not admissible to the applicant.

17(i) Revenue Division allotment for appointment by nomination and promotion to the posts of Group "A" and Group "B" (Gazetted and non-Gazetted) of the Government of Maharashtra is in existence. While giving appointment by nomination or by promotion the said rules are followed. According to rules named as Revenue Division Allotment for appointment by nomination and promotion to the posts of "Group A" and "Group B" (Gazetted and Non Gazetted) of the Govt. of Maharashtra (Second Amendment) Rules, 2017, the division is allotted to the applicant.

(ii) The applicant has given her choice to Konkan-1 division in prescribed format. The choice option was submitted by applicant on 28.5.2018 is annexed herewith and marked as **Exhibit R-4**. Therefore, as per choice given by the applicant, the applicant was given posting in Konkan-1 Division. Therefore, the contention of the applicant in this para is not correct and is denied.

18. With reference to contents of paragraph No. 6(xiv-e), I submit as follows : The deem date is given as per Maharashtra Civil Service (Regulation of Seniority) rules, 1982. The rule 5(3) of the said Rules deals about the grant of deem date. General Administration Department vide its circular dated 6th June, 2002 clarified that before giving deems date of promotion, permission of G.A.D. and Finance Department should be sought.

(i) The copy of circular dated 6.6.2002 is annexed herewith and marked as **Exhibit R-5**. As per said circular, the proposal was submitted to the General Administration Department and the General Administration Department has not accorded sanction to the proposal of the department. The copies of note sheet submitted by the respondent no. 1 and the reply given by G.A.D. are annexed herewith and marked as **Exhibit R-6 colly**.

(ii) It is submitted that the date of regular promotion to the applicant will be finalized only after the final decision of Hon'ble Supreme Court of India in SLP No. 28306/2017. In view of this, the applicant is not eligible for deem date.

10. Learned Chief Presenting Officer has relied on the judgment of the Hon'ble Supreme Court in the case of Union of India & Ors Vs. N.C Murali & Ors, (2017) 13 SCC 575, Service Law – Promotion – Retrospective promotion – Permissibility – Extent of. Relevant portion of the same is reproduced below:-

“9. The learned counsel for the respondents and the intervenors submit that with no fault of the respondents DPC was not convened. Although as per the departmental circular, DPC was to be convened every year and in fact there was no stay of not holding the DPC by the Tribunal, the respondents were entitled to their promotion from the respective year when the vacancy arose as per their eligibility. It is further contended that the benefit of retrospective promotion had been extended to the respondents under the orders of the Tribunal and most of the respondents who had availed of the benefit of such retrospective promotion, had already attained the age of superannuation and at this distance of time, the orders passed by the Courts be not interfered with.”

The Supreme Court therefore concluded by making following observations:-

“17. In view of the law laid down in the abovementioned case, it is clear that unless there is specific rule entitling the applicants to receive promotion from the date of occurrence of vacancy, the right of promotion does not crystallize on the date of occurrence of vacancy and the promotion is to be extended on the date when it is actually effected.”

12. Learned Chief Presenting Officer therefore submits that applications is without any foundation and deserves to be dismissed.

Issues for consideration:

13. Whether the impugned order rejecting the representation of the applicants to provide them deemed date of promotion from the date of vacancy and without assuming charge of the higher post is arbitrary, illegal and vitiated.

Replied in negative.

Discussion & Findings:

14. I have perused the available record. The date of promotion is determined as per Rule 32 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981. The said rule reads as under:-

“The promotion of a Government servant from a lower to higher post, his duties remaining the same, takes effect from the date on which the vacancy occurs, unless it is otherwise ordered. But when the promotion involves the assumption of a new post with enlarged responsibilities, the higher pay is admissible only from the date on which the duties of the new post are taken.”

The sequence of promotion has been elaborately explained by the Respondents in their affidavit in reply. To recapitulate the same:

- (i) On 24.3.2018 Establishment Board no. 2 approved filling in 8 posts of Joint Director by D.P.C.
- (ii) Decision of the Establishment Board No. 2 communicated on 25.5.2018.
- (iii) This communication was received by the School Education Department on 28.5.2018.
- (iv) On the same day choice of revenue division of eligible officers was sought.

- (v) On 29.5.2018 choice of revenue division of offices was communicated.
- (vi) On 29.5.2018 Civil Services Board held its meeting and recommended the posts.
- (vii) Recommendations were submitted to the appointing authority.
- (viii) On receipt of the same, promotion orders were issued on 31.5.2018.
- (ix) On the same day, namely, 31.5.2018, Commissioner of Education issued order relieving the officers promoted.

The sequence of event mentioned above does not indicate that there was any lethargy on the part of the Respondents.

15. Mere existence of vacancies was not enough. Moreover, orders regarding regular promotion could not have been expedited in view of the judgment given by the Hon'ble Bombay High Court in Civil Writ Petition no. 2797/2015 which struck down the G.R dated 25.5.2004 and directed concerned to take necessary corrective steps/measures in respect of promotion already granted.

16. The contention therefore by the applicants that the vacancies which existed more than 3 years should have been filled in early does not hold any water.

17. The contentions of the applicants that as the orders were issued late and they could not join the same physically, therefore, the same should not come in the way of their claim also cannot be accepted as unless the officers actually take charge of the higher post, they cannot be considered as eligible to draw the benefits of that post, as observed by the Hon. Supreme Court in N.C Mural's case (supra), that the right of promotion does not crystalize on the date of occurrence of vacancy and the promotion has to be extended on the date when it is actually effected.

18. The applicants, cannot therefore be given deemed date of promotion when they did not take charge of the higher post. For the above reasons, the Original Application has to be rejected.

19. In view of the foregoing, the Original Applications are devoid of any merits and the same is dismissed. No order as to costs.

(P.N Dixit)
Vice-Chairman (A)

Place : Mumbai
Date : 14.08.2019
Dictation taken by : A.K. Nair.

