

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 961/2023(S.B.)**

Wasudeo S/o Kanhoji Kajale,
Aged about 61 years, Occu.: Retired,
R/o at Post Sawane Layout,
Opp. Forest Office, Yavatmal Road,
Post & Tah. Aarni, District Yavatmal.

Applicant.

Versus

1. State of Maharashtra,
Through its Principal Secretary,
Water Resources Department,
Mantralaya, Mumbai-32.
2. Superintending Engineer,
Data Collection,
Planning & Hydrology Project Circle,
Dindori Road, Nashik -422004.
3. Executive Engineer,
Hydrology Project Division,
Vainganga Nagar, Ajni,
Nagpur-440003.

Respondents

Shri R.M.Fating, Ld. Counsel for the applicant.
Shri A.M.Khadatkar, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.
Dated:- 12th April, 2024.

JUDGMENT

Heard Shri R.M.Fating, learned counsel for the applicant and Shri A.M.Khadatkar, learned P.O. for the respondents.

2. Case of the applicant in short is as under-

The applicant was initially appointed as a Technical Assistant on 04.09.1985. The applicant was absorbed on the post of Civil Engineering Assistant by order dated 01.01.1989. The applicant has passed departmental examination in the year 1996. The respondents have granted benefit of first time bound promotion to the applicant on the post of Junior Engineer w.e.f. 04.09.1997. Thereafter, the respondents have extended second time bound promotion to the applicant on the post of Sectional Engineer w.e.f. 04.09.2009. Thereafter, third time bound promotion on the post of Sub-Divisional Engineer. It is submitted that up-gradation of the post of Sectional Engineer cannot be taken into consideration for the purpose of financial benefits as per ACPS/Time bound promotion. Hence, the applicant approached to this Tribunal for the following reliefs-

i) Hold and declare that the Applicant is entitled for Second and Third time bound promotion/ACPS on the post of Sub Divisional Officer and Executive Engineer respectively.

ii) Quash and set aside the impugned order dated 20.10.2021 (ANNEXURE A-9) issued by the Respondent No.2, in the interest of justice;

iii) Quash and set aside the impugned order dated 12.09.2022 (ANNEXURE A-10) pertaining to wrongful pay fixation of the Applicant arising out of time bound promotion/ACPS issued by the Respondent no.3, in the interest of justice;

iv) Direct the Respondents to extend the benefit of Second time bound promotion/ACPS on the post of Sub Divisional Officer (Pay scale PB Rs.15600-39100 GP Rs.5400) w.e.f. 01.01.2013, so also third time bound promotion/ACPS on the post of Executive Engineer in the (pay scale S-23: 67700-208700) w.e.f. 01.01.2019;

v) Direct the Respondents to revise the benefits of Second and Third time bound promotion/ACPS and accordingly revise the pension and pensionary benefits, and further direct to grant all consequential benefits arising out revision of time bound promotion benefits along with interest thereon;

vi) Grant any other relief which this Hon'ble Tribunal deems fit just and proper in the facts and circumstances of the case.

3. The O.A. is strongly opposed by the respondents 2 and 3.

It is submitted that the respondents have granted first, second and third time bound promotion respectively. First time bound promotion was granted after completion of 12 years of service from the date of absorption on the post of Civil Engineering Assistant. The second and third time bound promotion on the post of Sectional Engineer and Sub-Divisional Engineer was given respectively. Hence, the O.A. is liable to be dismissed.

5. During the course of submission, the learned counsel for the applicant has pointed out the communication / Circular dated

14.11.2019 and Judgment of the Hon'ble Bombay High Court, Bench at Aurangabad in Civil Appeal No.8009/2021. The learned counsel for the applicant has pointed out the Appointment/Recruitment Rules of 1970. He has pointed out the material portion of the Rules and submitted that the promotional post of Sub-Divisional Engineer shall be bifurcated from the said seniority list of Junior Engineer.

6. In short, the submission of applicant is that he was granted second time bound promotion on the post of Sectional Engineer instead of Sub-Divisional Engineer and thereafter third time bound promotion was granted on the post of Sub-Divisional Engineer instead of Executive Engineer.

7. The leaned P.O. has submitted that the respondents have rightly granted promotion to the applicant. Hence, the O.A. is liable to be dismissed. The G.R. dated 21.08.2019 is very clear. Paras 5 and 6 of the G.R. are reproduced below-

५. कनिष्ठ अभियंता संघटना, महाराष्ट्र राज्य व इतर यांनी सदर दि.१३.०६.२०१६ च्या परिपत्रकास मूळ अर्ज क्रमांक ८३७/२०१६ अन्वये महाराष्ट्र प्रशासकीय न्यायाधिकरण, मुंबई मध्ये आव्हान दिले होते. सदर मूळ अर्जामध्ये मा. न्यायाधिकरण, मुंबई यांनी दि.०२.०२.२०१७ च्या अंतिम आदेशावरून, उपरोक्त शासन परिपत्रक वित्त विभाग दि.१३.०६.२०१६ अन्वये वित्त विभागाने निर्गमित केलेले स्पष्टीकरण, योग्य असल्याचा निष्कर्ष काढून, सदर मूळ अर्ज फेटाळून लावला. मा. न्यायाधिकाऱ्याच्या उपरोक्त दि.०२.०२.२०१७ च्या मा. न्यायाधिकाऱ्याच्या आदेशाविरुद्ध कनिष्ठ अभियंता संघटना, महाराष्ट्र राज्य यांनी मा. उच्च न्यायालय, मुंबई मध्ये याचिका

क्रमांक २६०५/२०१७ दाखल केली होती. या याचिकेत दि.०६.०२.२०१९ रोजी झालेल्या अंतिम सुनावणीत मा. उच्च न्यायालयाने मा. न्यायाधिकरणाचे दि.०२.०२.२०१७ चे अंतिम आदेश रद्द करून ज्या अर्जदारांकडून दि.१३.०६.२०१६ च्या परिपत्रकाच्या परिणामी वसुली करण्यात आली आहे, अशी वसूल केलेली रक्कम संबंधितांना परत करण्याचे, प्रतिवादींना आदेशित केले.

६. शासन परिपत्रक विधि व न्याय विभाग दि.०२.०४.२०१४ मधील सूचना विचारात घेता, मा. उच्च न्यायालयाच्या दि.०६.०२.२०१९ च्या आदेशाविरुद्ध जलसंपदा विभागाकडून मा. सर्वोच्च न्यायालयात दाखल करणे प्रस्तावीत असलेल्या विशेष अनुमती याचिकेतील अंतिम निर्णयाच्या अधीन राहून शासन परिपत्रक वित्त विभाग दि.१३.०६.२०१६ हे, या शासन परिपत्रकान्वये रद्द करण्यात येत आहे. हे परिपत्रक रद्द केल्याच्या परिणामी मा. उच्च न्यायालयाच्या दि.०६.०२.२०१९ रोजीच्या आदेशातील परिच्छेद क्रमांक ४४ मधील निर्देशाचे; जलसंपदा विभाग, सार्वजनिक बांधकाम विभाग व ग्रामविकास विभाग या विभागांनी अनुपालन करावे. तसेच जलसंपदा विभागाने मा. सर्वोच्च न्यायालयात विशेष अनुमती याचिका दाखल करण्याची त्वरीत कार्यवाही करून तसा अनुपालन अहवाल वित्त विभागास सादर करावा.

7. Special Leave Petition was filed and the Judgment in **Writ Petition No.2605/2017 in the case of the Association of Subordinate Service of Engineers Maharashtra State and Ors. Vs. The State of Maharashtra and Ors.** was challenged. It is submitted that S.L.P. was filed, but subsequently it was withdrawn. Thereafter, Writ Petition was filed before the Hon'ble Bombay High Court, Bench at Aurangabad by similarly situated employees. The Hon'ble High Court has held in paras 11 and 12 as under-

11. We, however, do not propose to go into the individual cases and entitlement of the individual petitioners for grant of a particular financial upgradation, under ACP/MACP Scheme. Since this Court has already laid down law that the non functional upgradation

granted on the post of Sectional Engineering cannot be counted as set off for any financial upgradation under the ACP/MACP Scheme, the direction is binding on the respondents including the Zilla Parishad, Parbhani and the Zilla Parishad, Jalna.

12. Accordingly, the present petitions are allowed. The respondents are directed to grant admissible financial upgradation under ACP/MACP Scheme to the respective petitioners, by ignoring non functional upgradation granted/admissible, on the post of Sectional Engineer. The consequential benefits be paid to the respective petitioners.

8. As per the Appointment/Recruitment Rules, 1970 the promotional post of Sub-Divisional Engineer shall be from the post of Junior Engineer. Therefore, it is clear that there is no promotional channel of promotion on the post of Sectional Engineer. The applicant was granted benefit of second time bound promotion on the post of Sectional Engineer instead of Sub-Divisional Engineer. Next time bound promotion was to be granted to the applicant on the post of Executive Engineer, but he was granted time bound promotion on the post of Sub-Divisional Engineer.

9. In view of the Judgment of Bombay High Court, Bench at Aurangabad and the G.R. issued by the State Government, it is clear that the Sectional Engineer is not a promotional post. Therefore, financial benefits of time bound promotion shall be granted on the post of Sub-Divisional Engineer and thereafter on the post of Executive Engineer. Hence, the following order-

ORDER

1. The O.A. is allowed.

2. The respondents are directed to give the benefits of second time bound promotion on the post of Sub-Divisional Engineer w.e.f. 01.01.2013 and thereafter to give benefit of third time bound promotion on the post of Executive Engineer instead of Sub-Divisional Engineer w.e.f. 01.01.2019.
3. The respondents are directed to pay all financial benefits / arrears to the applicant.
4. The respondents are directed to comply the order within a period three months from the date of receipt of this order.
5. No order as to costs.

(Justice M.G.Giratkar)
Vice Chairman

Dated – 12/04/2024.
rsm.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Vice Chairman.
Judgment signed on : 12/04/2024.
Uploaded on :
