

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 1016/2023 (S.B.)**

Jaypal S/o Nanaji Badre,
Aged about 34 years,
Occ. Service, R/o Govt. Quarter 160th Rooms,
Civil Lines, Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
Through it's Principal Secretary,
Department of Law & Judiciary,
Mantralaya, Mumbai- 400 032.
- 2) The State of Maharashtra,
Through its Joint Secretary,
Department of Law and Judiciary,
Administrative Building No. 1,
Civil Lines, Nagpur.
- 3) Desk Officer, Department of Law & Judiciary,
Administrative Building No. 1,
Civil Lines, Nagpur.

Respondents

Shri S.D.Chande, Id. Advocate for the applicant.

Shri A.M.Khadatkar, Id. P.O. for the respondents.

Coram :- Hon'ble Shri M.A.Lovekar, Member (J).

JUDGMENT

Judgment is reserved on 13th June, 2024.

Judgment is pronounced on 21st June, 2024.

Heard Shri S.D.Chande, ld. counsel for the applicant and Shri A.M.Khadatkar, ld. P.O. for the Respondents.

2. By order dated 30.03.2016 (A-4) the applicant was appointed as Peon from Scheduled Caste Category on the establishment of respondent no. 2. He filed O.A. No. 728/2020 for refixation of seniority, with a direction to consider the refixed seniority for the purpose of promotion to Class-III post from Class-IV. Said O.A. was allowed by this Bench by judgment dated 29.03.2022 (A-15). In the meantime, by order dated 02.01.2020 (A-8) Smt. Priyanka Ghatge, Peon, was promoted as Clerk-Cum-Typist. Thereafter, seniority was refixed pursuant to judgment of this Tribunal dated 29.03.2022. The applicant and one Shri P.D.Dalvi both of whom were senior to Smt. Priyanka Ghatge were promoted as Clerk-Cum-Typist by order dated 08.12.2022 (A-17).

In these facts the applicant has sought the following relief :-

Direct the respondent no. 2 to issue promotion order for the post of clerk-cum-typist in favour of the applicant w.e.f. 02.01.2020 and thereby grant difference of arrears of salary in between 02.01.2020 to 08.12.2022 and also grant other consequential benefits, in the interest of justice.

3. In their reply the respondents stated that order of promotion of Smt. Priyanka Ghatge (A-8) was cancelled by order dated 30.06.2022 and she was reposted as Peon. Four posts of Clerk-Cum-Typist were

vacant which were to be filled by promotion from Class-IV employees. On 08.12.2022 the applicant and Shri Dalvi were promoted. On 12.12.2022 Smt. Priyanka Ghate and Smt. Raut were promoted. As per G.R. dated 21.08.2015 deemed date of promotion can be granted on the basis of the date on which junior person is promoted.

4. In the instant case Smt. Priyanka Ghate was promoted by order dated 02.01.2020 though she was junior to the applicant. The applicant filed O.A. No. 728/2020 challenging fixation of seniority, and promotion given to Smt. Priyanka Ghate on the basis of wrongly fixed seniority. This bench allowed O.A. No. 728/2020 by judgment dated 29.03.2022 operative part of which reads as under:-

Application is allowed in the following terms-

(i) Respondent no.2 is directed to re-fix the inter-se-seniority as per Select / Merit list prepared by Selection Committee, within one month from today.

(ii) Respondent no.2 shall consider afresh the question of promoting eligible Class-IV candidates to Class-III post of Clerk/Typist in the light of re-fixation of seniority to be made as per this order and take a decision in accordance with Law.

(iii) No order as to costs.

Pursuant to order dated 29.03.2022 seniority was refixed in which the applicant and one Shri Dalvi stood above Smt. Priyanka Ghate. After this refixation order of promotion of Smt. Priyanka Ghate dated

02.01.2020 was cancelled by order dated 30.06.2022. The applicant was eventually promoted by order dated 08.12.2022. Smt. Priyanka Ghatе and one Smt. Raut were promoted by order dated 12.12.2022.

5. It was submitted by Shri Chande, Id. counsel for the applicant that as on 02.01.2020 there was a vacancy of Clerk-Cum-Typist which was to be filled by promoting a Class-IV employee, this vacancy was initially filled by promoting Smt. Priyanka Ghatе and then the error was corrected by cancelling the said order. According to Advocate Shri Chande, on 02.01.2020 the applicant who was senior, should have been promoted instead of Smt. Priyanka Ghatе and for denial of promotion the employer was solely responsible. It was contended that in these facts the O.A. deserves to be allowed in terms of prayer clause (i). In support of this submission reliance is placed on **Ramesh Kumar Vs. Union of India & Ors. AIR 2015 SCC 2904** wherein it is held:-

We are conscious that even in the absence of statutory provision, normal rule is "no work no pay". In appropriate cases, a court of law may take into account all the facts in their entirety and pass an appropriate order in consonance with law. The principle of "no work no pay" would not be attracted where the respondents were in fault in not considering the case of the appellant for promotion and not allowing the appellant to work on a post of Naib Subedar carrying higher pay scale. In the facts of the present case when the appellant was granted promotion w.e.f. 01.01.2000 with the ante-dated seniority from 01.08.1997 and maintaining his seniority along with his batchmates, it would be unjust to deny him higher pay and allowances in the promotional position of Naib Subedar.

Further reliance is placed by the applicant on **Nitish Ramji Shende Vs. State of Maharashtra & 2 Ors. judgment of Hon'ble Bombay High Court, Bench at Nagpur dated 25.02.2022 in W.P. No. 7044/2019**, wherein it is observed and directed:-

4. *After hearing the learned counsel for the parties and after perusing the relevant documents on record, it is clear that in the final seniority list published on 01.01.2006 the petitioner has been shown senior to Shri Anil Rathod and Shri Sanjay Chimurkar. Both of them now have been granted the deemed date of promotion as 01.04.2007. The petitioner claims that he be granted the deemed date of promotion with effect from 03.11.2006 when the vacancy in question became available. We find that in the light of revised order dated 16.09.2015 issued by the respondent no. 3 granting deemed date of promotion to petitioner's juniors, the petitioner's case can be conveniently considered by directing the respondent no. 3 to constitute a Revised Departmental Promotion Committee which could examine the claim of the petitioner.*

5. *Accordingly, the writ petition is disposed of by passing the following order:*

(i) *The respondent no. 3 shall within a period of six weeks from today constitute Revised Departmental Promotion Committee for considering the claim of the petitioner for grant of deemed date of promotion to the post of Assistant Engineer, Grade I.*

(ii) *The said Committee shall consider the request of the petitioner for grant of deemed date of promotion from 03.11.2006 or at least from 01.04.2007 on which date his juniors have been promoted. It is open for the petitioner to place before the Committee all relevant material which shall be taken into consideration in that regard.*

(iii) *The Committee shall take appropriate decision within a period of four weeks from its meeting and communicate the same to the petitioner. All points on merit raised in the writ petition are kept open.*

Rule accordingly. No costs.

In view of ratio laid down in the aforementioned rulings following order deserves to be passed. **The O.A. is allowed in the following terms.** The respondents are directed to constitute within six weeks from today D.P.C. for considering claim of the applicant for grant of deemed date of promotion to the post of Clerk-Cum-Typist. The Committee shall take appropriate decision within a period of four weeks from the date on which meeting is held and communicate the same to the applicant forthwith. No order as to costs.

Member (J)

Dated :- 21/06/2024
aps

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

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 21/06/2024
and pronounced on

Uploaded on : 24/06/2024