



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.9152 OF 2021

Nazeer Khan s/o Sher Khan,
Age-57 years, Occu:Service,
(as a assistant Librarian in Moulana Azad
College, Aurangabad),
R/o-Rouza Baug, Aurangabad.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Higher and Technical Education
Department, Mantralaya, Mumbai,
Through its Secretary,
- 2) The State of Maharashtra,
Finance Department,
Mantralaya, Mumbai,
Through its Secretary,
- 3) The Director of Higher and Technical
Education, Pune, Region, Aurangabad,
- 4) The Joint Director of Higher Education,
Aurangabad Region, Aurangabad,
- 5) Moulana Azad Education Society,
Rouza Baug, Aurangabad,
Taluka and District-Aurangabad,
Through its President,
- 6) The Principal,
Maulana Azad College of Arts, Science
& Commerce, Rouza Baug, Aurangabad,
Taluka and District-Aurangabad.

...RESPONDENTS

...
Mr. Syed Masood Chand, Advocate for Petitioner.
Mr. P.S. Patil, Additional G.P. for Respondent Nos.1 to 4.
Mr. P.S. Dighe, Advocate for Respondent Nos.5 and 6.
...

**CORAM: SMT. VIBHA KANKANWADI AND
S.G. CHAPALGAONKAR, JJ.**

DATE : 29th FEBRUARY, 2024

JUDGMENT [PER SMT. VIBHA KANKANWADI, J.] :

1. Rule. Rule made returnable forthwith. Heard learned counsel appearing for the respective parties finally, by consent.
2. Present Petition has been filed for following reliefs:-

“(B) By writ and mandamus or any other appropriate writ, order or directions in the like nature the letter / order dated 05-12-2017 issued by respondent No.4 be quashed and set aside and the respondent No.4 be directed to grant second time bound promotional benefits to the petitioner from 1-08-2014 i.e. after completion of 24 years.

“(C) By writ of mandamus or any other appropriate Writ, Order or Directions in the like nature the respondents specifically respondent No.1, 2 be directed to restore the Government Resolution dated 1-04-2010 and 5-07-2010

and the Government Resolutions dated 7-12-2018 and 16-02-2019 be declare null and void.”

3. The facts leading to the Petition are that the petitioner having qualification as B.Com, B. Lib., was appointed as a Library Assistant in respondent No.6 college run by respondent No.5 after following due procedure of law and on clear and vacant post on 1st August 1990 on the pay-scale of Rs.975-1540. The petitioner was given the first time bound promotional scheme benefits on 1st August 2002 after 12 years and the pay-scale that was conferred upon him was Rs.4000-6000 as a senior scale. Thereafter the petitioner was promoted to the post of Assistant Librarian on 1st December 2008 on the pay-scale of Rs.4500-7000. The petitioner completed his 24 years service on 1st August 2014 and therefore he should have been considered for the next promotional time bond benefit as per Government Resolutions dated 1st April 2010 and 15th February 2011. Accordingly, the proposal was submitted by respondent No.6 to respondent No.4 on 21st December 2015 along with relevant documents. However, it came to be rejected by letter dated 4th April 2016. It is stated that since the promotion has been granted on 1st December 2008 and yet the further period has not

been completed, the petitioner is not entitled for the said benefit. Respondent No.6 again submitted the proposal to respondent No.4 on 11th July 2016 and requested second time bound promotion to the petitioner, however, it was also rejected on 2nd November 2016 on the ground that the petitioner has been promoted to the post of Assistant Librarian on 1st December 2008 and has not completed 24 years service on one and the same post. The petitioner says that the said interpretation by respondent No.4 of the Government Resolution is wrong. As per Government Resolution dated 1st July 2011 the period of 24 years of service has to be counted as per the initial date of appointment. According to the petitioner by Government Resolutions dated 7th December 2018 and 16th December 2019 the Government Resolutions dated 15th February 2011 and 28th December 2010 came to be cancelled with retrospective effect. It is illegal. Hence for the aforesaid reliefs, the Petition has been filed.

4. Affidavit-in-reply on behalf of respondent Nos. 1, 3 and 4 has been filed by Dr. Satish Madhavrao Deshpande, serving as Joint Director, Higher Education, Aurangabad Region, Aurangabad, giving the background in which the benefits of

Assured Career Progression Scheme (for short "ACP Scheme") were given. It is reiterated that since the petitioner was promoted to the post of Assistant Librarian on 1st December 2008 and the pay-scale was higher pay-scale, he is not entitled to the relief claimed. It is further stated that the Government of Maharashtra has further issued Government Resolution dated 25th August 2022 stating that from the date of Government Resolutions dated 7th December 2018 and 16th February 2019, no benefits of revised assured career scheme shall be granted to the non-teaching staff members working in the colleges affiliated to the universities. It is the outcome of the observations of this Court in *Writ Petition No. 5363 of 2021 dated 20th January 2022 (Shri Meghraj Pandit and others vs. State of Maharashtra and others)*.

5. Heard learned Advocate Mr. Syed for the petitioner, learned Additional Government Pleader Mr. Patil for respondent Nos. 1 to 4 and learned Advocate Mr. Dighe for respondent Nos. 5 and 6.

6. At the outset, it is to be stated that as regards the different Government Resolutions which were initially made applicable, then withdrawn and then again another Resolution

came to be passed on 25th August 2022, now further Government Resolution has been issued on 31st May 2023 stating that the Government Resolutions dated 7th December 2018, 16th February 2019 and 25th August 2022 in respect of ACP Scheme to be granted to the non-teaching staff members working in the colleges affiliated to the universities stands cancelled and the scheme as per Government Resolutions dated 28th December 2010 and 15th December 2011 are to be continued as before. In view of the latest Government Resolution dated 31st May 2023, the prayer clause (C) above-said, has become infructuous, as now the Government Resolutions dated 28th December 2010 and 15th February 2011 are available to the petitioner and other employees working in the colleges affiliated to the universities.

7. Now the question only remains, as to whether the petitioner would be entitled to get the second time bound promotional benefits from 1st August 2014, which is the date on which he has completed 24 years of service. Therefore, we, once again take the facts into consideration. The date of appointment of the petitioner is 1st August 1990 in the pay-scale of Rs.975-1540. The first time bound promotional benefit was given to the petitioner on 1st August 2002 i.e. after 12 years of service and

the pay-scale conferred was Rs.4000-6000. The fact is that the petitioner, thereafter was promoted to the post of Assistant Librarian on 1st December 2008 on the next higher pay-scale i.e. Rs.4500-7000. The copy of the service book of the petitioner is also placed on record.

8. We would like to reproduce the relevant part of the Government Resolution dated 1st April 2010, by which the scheme was applied after making improvements:-

" (क) योजनेचा दुसरा लाभ :-

(१) पहिल्या लाभानंतर १२ वर्षांची नियमित सेवा पूर्ण केलेल्या कर्मचा—यास पदोन्नतीच्या पदाची वेतनसंरचना दुसरा लाभ म्हणून मंजूर करण्यात येईल. तथापि, या योजनेतील पहिला लाभ म्हणून ज्या पदाची वेतनसंरचना मंजूर करण्यात आली आहे त्या पदाला विवक्षित संवाकालावधीनंतर, त्या पदाच्या कर्तव्ये व जबाबदा—यांत वाढ न होता, अकार्यात्मक वा तत्सम उच्च वेतनसंरचना मंजूर करण्यात येत असेल तर ती अकार्यात्मक वा तत्सम उच्च वेतनसंरचना दुसरा लाभ म्हणून मंजूर करण्यात येईल.

(२) दुसरा लाभ मंजूर केल्यानंतर पहिल्या लाभाप्रमाणेच पदोन्नतीच्या नियमानुसार विकल्प देण्याची मुभा देऊन वेतननिश्चिती करण्यात येईल, पदोन्नतीनंतर पुन्हा वेतननिश्चितीचा लाभ अनुज्ञेय असणार नाही.

(३) -----

(ड) योजनेच्या दुस-या लाभासाठी पात्रतेच्या अटी व शर्ती :-

(१) पहिला लाभ घेतलेल्या व त्यानंतर प्रत्यक्ष पदोन्नती मिळालेल्या कर्मचा-यास दुसरा लाभ मंजूर करताना तो पहिल्या लाभाप्रमाणेच दिनांक २० जुलै २००१, च्या आदेशामधील व यासंबंधी वेळोवेळी निर्गमित करण्यात आलेल्या स्पष्टीकरणात्मक आदेशांतील तरतुदीच्या अधिन मंजूर करण्यात यावा. म्हणजेच, ज्या पदाची वेतनसंरचना मंजूर करण्यात येणार आहे, त्या पदावर प्रत्यक्ष पदोन्नती मिळण्यासाठी विहित केलेल्या अटी व शर्तीची पूर्तता करणे आवश्यक राहिल.

(२) पहिल्या लाभांतर्गत पदोन्नतीच्या ज्या पदाची वेतनसंरचना मंजूर करण्यात आली आहे त्या पदावर प्रत्यक्ष पदोन्नती न मिळालेल्या कर्मचा-यांच्या बाबतीत, दुसरा लाभ मंजूर करण्यासाठी, त्याला ज्या पदाची वेतनसंरचना मंजूर करण्यात येणार आहे त्या पदावरील पदोन्नतीसाठी विहित केलेली गोपनीय अहवालाची किमान सरासरी प्रतवारी प्राप्त करणे आवश्यक राहिल.

(३) एक प्रत्यक्ष पदोन्नती मिळाल्यानंतर या योजनेखाली पदोन्नतीच्या पदाच्या वेतनसंरचनेचा पहिला लाभ मिळाला असेल आणि त्यानंतर पदोन्नती साखळीत (Hierarchy) पुढील पदोन्नतीचा संवर्ग उपलब्ध नसेल किंवा

या योजनेअंतर्गत एक लाभ मिळाल्यानंतर एक प्रत्यक्ष पदोन्नती मिळाली असेल आणि त्यानंतर पदोन्नती साखळीत (Hierarchy) पुढील पदोन्नतीचा संवर्ग उपलब्ध नसेल, किंवा

कर्मचा—यास या योजनेखाली पदोन्नतीच्या पदाच्या वेतनसंरचनेचा पहिला लाभ मिळाला आहे व त्यानंतर पदोन्नतीसाखळीत (Hierarchy) पुढील पदोन्नतीचा संवर्ग उपलब्ध नसेल तर — या तिन्ही प्रकरणी — तो ज्या पदाच्या वेतनसंरचनेत वेतन घेत आहे ते पद जणूकाही एकाकी पद आहे असे समजून त्या वेतनसंरचनेतील एकाकी पदाला योजनेच्या पहिल्या लाभांतर्गत अनुज्ञेय असणारी वेतनसंरचना दुसरा लाभ म्हणून मंजूर करण्यात येईल.

या योजनेचा पहिला लाभ मिळाल्यानंतर कर्मचा—यास पहिल्या लाभाच्या पदावर प्रत्यक्ष पदोन्नती मिळाली असेल आणि त्यानंतर योजनेचा दुसरा लाभ मिळण्यापूर्वीच त्यापुढील पदोन्नतीच्या पदावर प्रत्यक्ष पदोन्नती मिळाली असेल व त्यानंतर पदोन्नती साखळीत पुढील पदोन्नतीचा संवर्ग उपलब्ध नसेल तर, तो ज्या पदाच्या वेतनसंरचनेत वेतन घेत आहे ते पद जणूकाही एकाकी पद आहे असे समजून त्या एकाकी पदाला योजनेच्या पहिल्या लाभांतर्गत अनुज्ञेय असणारी वेतनसंरचना दुसरा लाभ म्हणून मंजूर करण्यात येईल.

(४) कर्मचा—यास या योजनेखाली कोणताही लाभ मिळण्यापूर्वी एक प्रत्यक्ष पदोन्नती मिळाली असेल व त्यानंतर पदोन्नतीसाखळीत (Hierarchy) पुढील पदोन्नतीचे पद उपलब्ध नसेल आणि त्याला वरील उपपरिच्छेद (ब) (४) नुसार योजनेचा पहिला लाभ मंजूर करण्यात आला असेल तर, त्याला एकाकी पदास ज्याप्रमाणे या योजनेचा दुसरा लाभ मंजूर करण्यात येतो त्याप्रमाणे दुसरा लाभ मंजूर करण्यात येईल.

(५) पहिला लाभ मंजूर केल्यानंतर संबंधित कर्मचारी प्रत्यक्ष पदोन्नतीस अपात्र ठरला अथवा त्याने पदोन्नती नाकारली तर अशा

प्रकरणी पहिला लाभ काढून घेतला जात असल्याने अशा कर्मचा—यांचा थेट दुस—या लाभासाठी विचार करता येणार नाही. मात्र त्याने त्यानंतर पदोन्नती स्वीकारल्याच्या दिनांकापासून १२ वर्षांच्या नियमित सेवेनंतर त्याला अन्य अटी व शर्तीच्या अधीन राहून दुसरा लाभ मंजूर करता येईल. ”

9. Thus, it can be seen that the Government has laid down that if in the hierarchy there is promotional post available but the post is not vacant then the next i.e. second time bound benefit can be given. The very purpose for which the said scheme was made applicable was that for years together the employee would be at the stagnation and the promotional post is not vacant. But then while considering the eligibility criteria, it will have to be considered that there is no increase in the responsibility and duties. If such employee is getting the next pay-scale in a next cadre then he will not be entitled to get the benefit within the next 12 years from grant of such benefit. Herein this case, as aforesaid, the first time bound benefit was given to the petitioner on 1st August 2002 when he was serving as Library Assistant, as in that cadre he had put in 12 years of service. But later on the petitioner was promoted on 1st December 2008 as Assistant Librarian, which is a different cadre and his pay-scale also got

changed at higher side. Thus, when first time bound benefit was granted to the petitioner, the same was in the pay-scale of Rs.4000-6000 and thereafter the petitioner was promoted to the post of Assistant Librarian on 1st December 2008, in the pay-scale of Rs.4500-7000. Therefore, for becoming eligible for the next benefit i.e. second benefit, the petitioner ought to have put in 12 years of service from 1st December 2008 in the same cadre. The proposals, therefore, forwarded by respondent No.6 on 21st December 2015, 11th July 2016 and 5th May 2017 have been rightly rejected by respondent No.4. We do not find any merit in the present Petition. It deserves to be dismissed.

10. Accordingly, the Writ Petition stands dismissed. Rule stands discharged.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE