

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CONTEMPT PETITION NO. 385 OF 2013
IN WP/1565/1989

PADMAKAR DIGAMBARRAO DESHMUKH
VERSUS
ANIL DIGGIKAR, IAS AND ANOTHER

.....
Advocate for Petitioner : Mr. Ajay S. Deshpande
AGP for Respondent-State : Mr. S. D. Kaldate
.....

**CORAM : A. V. NIRGUDE AND
V. K. JADHAV, JJ.**

DATED : 2nd SEPTEMBER, 2015

P.C. :-

1. Heard.
2. Perused the record.
3. The writ petition No. 1565 of 1989 was disposed of by the Division Bench of this Court vide order dated 08th August, 2001, directing mainly the Zilla Parishad, Beed to grant deemed date of promotion of December, 1989 to the petitioner. It was further ordered that the petitioner would be entitled to salary of promotional post from December, 1989 and other consequential benefits, those may accrue as a result of re-fixation of the petitioner's salary since December, 1989. Accordingly, in the year 2002, the Zilla Parishad, pursuant to the order, granted deemed date of promotion of December, 1989 and even paid arrears.

4. It so happened that during pendency of this writ petition, in the year 1994, the petitioner was promoted to the post of "Assistant Live Stock Development Officer" of the State of Maharashtra. He left the services of Zilla Parishad and entered into the services of the State of Maharashtra. He could get such promotion because at that time, he was working in the Zilla Parishad as "Live Stock Supervisor". In the year 2001, the order in the writ petition was delivered, with the result, the petitioner deemed to have been promoted to the post of "Assistant Live Stock Development Officer". Such officer, if promoted to the cadre in the State Government service, he would get the post of "Live Stock Development Officer (Grade B)". The State of Maharashtra was considering as to whether such promotion should be deemed to have been given to the petitioner because of the order of this Court in the writ petition. Ultimately, in the year 2012, the State of Maharashtra resolved that the petitioner would be deemed to have been promoted to the post of "Live Stock Development Officer (Grade B)" with effect from 01.07.1994. However, the promotion Committee decided not to grant back-wages or difference of salary to the petitioner who had already retired on attaining the age of superannuation on 31.01.1997.

5. The main question therefore, between the parties, was whether, after deemed promotion in the year 1994, the petitioner was

entitled to the difference in salary ?

6. In order to support the stand of the Committee and the State of Maharashtra, the learned AGP placed reliance on Rule 32 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981, which reads as under :

“32. How the date of promotion is determined. - The promotion of a Government servant from a lower to a 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 learned AGP highlighted the following clause of the provision as "the higher pay is admissible only from the date on which the duties of the new post are taken". The learned AGP asserted that since the petitioner never enlarged the responsibilities and since he was given deemed promotion, he would not be entitled to the pay of promotional post.

7. The above argument made by the learned AGP is fallacious for the following two reasons:

i) that the Government assumed, and rightly so, that the petitioner was entitled to pay of “Live Stock Development Officer (Grade B)” on the date of his retirement for the purpose of calculating his pension. If such assumption is utilized for calculating pension amount, then there is no reason why such assumption should not go till the date of his deemed promotion, and

ii) that the assumption, that the petitioner did not have enlarged responsibilities from the year 1994, is fallacious because this is a case where the promotion is “deemed”. It relates to something that never took place. The petitioner was held entitled to such promotion in the year 1994 and yet, he was denied such promotion for no fault on his part. Therefore, the State of Maharashtra agreed to give the deemed date of promotion to the petitioner to the post of “Live Stock Development Officer (Grade B)” from 01.07.1994. The consequence is to pay him salary for the promotional post.

8. In view of this, it is clear that the State of Maharashtra is under obligation to pay the difference of pay to the petitioner from 01.07.1994 till the date of his retirement in the year 1997. The same

shall be paid within a period of four (04) weeks from today. No further orders are required to be passed on the Contempt Petition. The Contempt Petition stands disposed of.

9. The parties to act on an authenticated copy of this order.

(V. K. JADHAV, J.)

(A. V. NIRGUDE, J.)

vre/