

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

WRIT PETITION NO. 4420 OF 2014

Trimbak S/o Vishnu Joshi,
Age : 78 Years, Occu. : Nil,
(Pensioner)
R/o Near Ayappa Temple,
Beed By Pass Road, 'Sai Plaza'
Satara Parisar, Aurangabad. .. Petitioner

Versus

1. The State of Maharashtra
2. The Secretary
(Co-operatives & Marketing),
Department of Co-operation,
Marketing & Textile Industry,
M. S. Mantralaya, Mumbai-32.
3. The Commissioner for
Co-operation & Registrar of
Co-operative Societies,
M.S. Pune.
4. The Divisional Joint Registrar,
Co-operative Societies,
Latur. .. Respondents

Shri Avinash Deshmukh, Advocate h/f Shri Rajendra S.
Deshmukh, Advocate for the Petitioner.
Shri G. K. Thigle, Addl.G.P. for Respondent Nos. 1 to 4.

**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.
DATE : 15TH JUNE, 2015.**

ORAL JUDGMENT (*Per S. V. Gangapurwala, J.*) :-

. The petitioner assails the judgment of the Maharashtra Administrative Tribunal thereby dismissing the original application. The petitioner was claiming deemed promotion in the cadre of Assistant Registrar and Deputy Registrar.

2. Mr. Deshmukh, the learned counsel for the petitioner submits that, the Tribunal in an earlier original application filed by the present petitioner bearing Original Application No 1600 of 1992 has directed the authorities to pass appropriate orders considering the recommendations made and considering the decision taken in respect of other similar persons for giving the deemed date of promotion to the petitioner as Co-operative Officer Grade - I with effect from 20.11.1974. The petitioner was given deemed date of promotion as Co-operative Officer Grade - I with effect from 20.11.1974. The learned counsel submits that, thereafter, the petitioner has filed instant original application that pursuant to the petitioner being granted deemed date of promotion of Co-operative Officer Grade - I in the year 1974, the petitioner should be given deemed date of promotion of Assistant Registrar and Deputy Registrar. The Tribunal on hyper technical ground has negated the relief. The Tribunal has observed that, the petitioner has not claimed deemed date of promotion and has claimed promotion, as such relief is not granted. According to the learned counsel juniors to the petitioner were promoted as Assistant Registrar and Deputy

Registrar. At least the petitioner ought to have been given the said date as Assistant Registrar and Deputy Registrar. The learned counsel submits that, Rule 32 of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981 would in fact benefit the petitioner. The said rule would not come in the way of the petitioner for being given deemed date of promotion.

3. Mr. Thigle, the learned Additional Government Pleader submits that, promotion has to be considered on the scrutiny of many aspects of the matter. The Tribunal has rightly passed the order. Even as per Rule 32 of the M. C. S. (General Conditions of Service) Rules, 1981 unless the petitioner works on higher post, he cannot be granted the promotional post. The learned Additional Government Pleader submits that, the Tribunal further considered all the aspects of the matter and has rightly passed the order.

4. We have considered the submissions canvassed by learned counsel for respective parties.

5. The initial objection appears to be that, the petitioner has not passed G.D.C. & A. examination and as such was not granted promotion as Co-operative Officer Grade - I. It is not disputed that the petitioner is exempted from passing the said examination. As such after his retirement, petitioner is granted deemed date of promotion as Co-operative Officer Grade - I with

effect from 20.11.1974. Once the petitioner is exempted from passing said G.D.C. & A examination the petitioner could have been considered for promotion. Even after the orders passed by the Tribunal in the original application filed earlier, the petitioner has been given deemed date of promotion on the post of Co-operative Officer, Grade - I with effect from 20.11.1974. Even in the additional affidavit in reply filed, it has been accepted that, the petitioner was not considered for promotion as Assistant Registrar in the select list on 28.03.1981 as the petitioner was not working on the said post of Co-operative Officer Grade - I. Naturally, the petitioner would not have worked. It was only after the petitioner approached the Tribunal, thereafter the petitioner was subsequently granted the deemed date of promotion with effect from 20.11.1974. So also for the post of Deputy Registrar, at the time of promotion, the petitioner was not considered as he was not working on the post of Assistant Registrar. The said benefit is denied solely on the basis of Rule 32 of the M. C. S. (General Conditions of Service) Rules. Rule 32 of the said Rules of 1981 reads as under :

**MAHARASHTRA CIVIL SERVICES (GENERAL
CONDITIONS OF SERVICE) RULES 1981**

1.

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 orders. 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 or the new post are taken.

5. The said rule does not deal with grant of deemed date of promotion. Earlier also it is only after retirement, the petitioner was give deemed date of promotion as Co-operative Officer Grade - I. It is nowhere stated that, the petitioner was ineligible in any respect for being considered for the post of Assistant Registrar and Deputy Registrar. As the petitioner has not actually worked on the said post of Assistant Registrar and Deputy Registrar. The petitioner would not be entitled for the salary of the said post till the retirement. Nonetheless, the petitioner's case can be considered notionally for grant of deemed date. Even according to the petitioner his juniors are promoted as Assistant Registrar before the petitioner retired. Considering the aforesaid aspects of the matter, it was obligatory on the part of the respondents to consider the case of the petitioner for deemed date of promotion as Assistant Registrar and Deputy Registrar.

6. In the light of the above, we pass the following order.

7. The impugned order passed by the Tribunal is quashed and set aside. The respondents shall consider the case of the petitioner for deemed date of promotion as Assistant Registrar and Deputy Registrar considering that the petitioner is exempted

from passing G. D. C. & A. examination, so also considering that the petitioner has been given deemed date of promotion as Co-operative Officer Grade - I with effect from 20.11.1974. The dates shall be considered as on the date when juniors to the petitioner were promoted on respective posts of Assistant Registrar and Deputy Registrar. Of course, the petitioner would not be actually entitled for the salary of the post of Assistant Registrar and Deputy Registrar till the date of his retirement, as the petitioner has not worked on the said post in view of Rule 32 of the M. C. S. (General Condition of Service) Rules, 1981. However, after the respondents decide the deemed date of promotion as Assistant Registrar and Deputy Registrar, the petitioner shall be entitled for retiral benefits, considering the post on which the petitioner is deemed to have been promoted on the date of his retirement on attaining age of superannuation. The said exercise shall be done by respondents expeditiously and preferably within a period of six months from today. The writ petition accordingly partly allowed.

Rule is made absolute in above terms.

Sd/-

[V. K. JADHAV, J.]

Sd/-

[S. V. GANGAPURWALA, J.]