

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10846 OF 2014

Subhash Keshav Gosavi	...	Petitioner
vs.		
Director of Art, State of Maharashtra & Anr.	...	Respondents

Mr. Amol Gatne, Advocate for the petitioner.
Smt. Sushma Bhende, AGP for the State.

**CORAM : SMT. VASANTI A. NAIK &
C.V. BHADANG, JJ.**
DATE : 8th January, 2015.

P.C.

By this Petition, the petitioner seeks a direction to the respondent no. 1 to decide the representation made by the petitioner on 26th October, 2006. The petitioner seeks a direction to the respondent no. 1 to grant the promotional benefits to the petitioner under the Sixth Pay Commission from 1st January, 2006.

The petitioner was appointed as a Junior Clerk in the year 1969 and while working as such, there was a vacancy created on the post of Head Clerk. Though the vacancy arose on 1st January, 2006 and the petitioner was the seniormost eligible candidate, it is the case of the petitioner that the petitioner was appointed on the said post on 1st September, 2006. Since the vacancy for the post arose on 1st January, 2006, the petitioner made a representation to the respondent no. 1

seeking promotional benefits under the Sixth Pay Commission w.e.f. 1st January, 2006. The said representation is not decided by the respondent no. 1. By this petition, the petitioner has sought the direction to the respondent no. 1 to decide the representation and a prayer is also made for a direction to the respondent no. 1 to grant the benefits of the promotional post w.e.f. 1st January, 2006.

Mr. Gatne, the learned counsel for the petitioner submitted that the petitioner is entitled to the benefits of the Sixth Pay Commission with effect from 1st January, 2006, as the post of Head Clerk fell vacant on the said date. It is stated that merely because the petitioner was appointed on 1st September, 2006, the benefits of the promotional post cannot be denied to him. It is stated that similar benefits have been granted to similarly situated employees. It is stated that the respondent no. 1 has not taken a decision on the representation of the petitioner, so the respondent no. 1 may atleast be directed to take a decision.

It appears on hearing the learned counsel for the petitioner that both the prayers made by the petitioner in the instant petition are liable to be rejected. By the representation, the petitioner has sought the benefits of the promotional post of Head Clerk w.e.f. 1st January, 2006 on the ground that the said post fell vacant on that date. Admittedly, the petitioner was promoted to the said post on 1st September, 2006. It is

well settled that an employee would not be entitled to the benefit of the promotional post on the date on which the promotional post falls vacant but the employee would be entitled to the said benefits only on the date on which the employee is actually promoted to the said post. The petitioner was not promoted on the post of Head Clerk on 1st January, 2006 but was promoted on the said post on 1st September, 2006. In this background, the petitioner should not have made a request to the respondent no. 1 to grant the benefits of the promotional post to the petitioner w.e.f. 1st January, 2006. Even assuming that other employees have been granted similar benefits, the petitioner would be entitled to the relief only if the petitioner has the right to claim so. As recorded hereinabove, we find that the petitioner does not have a right to claim the benefits of the promotional post from the date the same fell vacant. The petitioner was promoted on the post of Head Clerk on 1st September, 2006 and the petitioner is duly paid the benefits of the promotional post from the said date. We do not find that the petitioner has a right to seek monetary benefits or even the deemed promotion from the date, the post fell vacant on 1st January, 2006.

In the result, the Writ Petition fails and is dismissed, with no order as to costs.

(C.V. BHADANG, J.)

(VASANTI A. NAIK, J.)