

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.640/2015

Shri Manohar s/o Atmaram Parate

..Versus..

The Union of India, Ministry of Consumer Affairs, Food and Public Distribution
Department, Krushi Bhawan, New Delhi and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri A.A. Naik with Shri M.D. Lakhey, Advocates for the petitioner.
Shri S.R. Deshpande, Advocate for respondent no.5.

CORAM : B.P. DHARMADHIKARI & Z.A. HAQ, JJ.

DATE : 7.9.2015

1. The petitioner claims that insistence upon production of caste certificate for availing the promotion as per order dated 9/11/2009 was arbitrary as said promotion is from open category. The language of said promotion order and an order passed in appeal by First Appellate Authority under Right to Information Act on 9/11/2010 are pressed into service to buttress this submission. It is pointed out that in reply before this Court employer has stated that said information supplied to petitioner cannot be construed as a decision of his representation. It is also pointed out that vide Note dated 24/2/2015 that decision has been taken and by placing reliance upon the judgment of this Court in Writ Petition No.2126/2010 with other matters in which present petitioner

was a co-petitioner, it has been stated that his seniority has been maintained separately. Thus, contention that promotion given in November, 2009 was from open category and hence it was not necessary to produce caste validity has been overlooked and no answer has been given.

2. Advocate Deshpande appearing for employer relies upon the judgment dated 1st November, 2012 in Writ Petition No.2126/2010 to submit that this Court has only granted protection to his appointment and, therefore, promotion or seniority has not been saved. The order has been accordingly implemented by employer and petitioner has been shown in a separate seniority list. Petitioner has not questioned that seniority list and hence present grievance is misconceived. It is pointed out that in the background of directions as contained in paragraph 18 of above mentioned judgment, the position of petitioner as on 28/11/2000 has been restored.

3. Respective counsel have invited our attention to documents placed on record. Petitioner has produced before this Court charts showing the position of reservation as on 31/3/2009 and 31/12/2009.

Effort is to demonstrate that after realizing that all reserved posts were already occupied, the exercise undertaken was to promote candidates from open category. Name of petitioner figures at serial no.19 as a candidate from open category.

4. The perusal of promotion order dated 9/11/2009 shows that name of petitioner appears at serial no.5 and he has been promoted to the post of Manager (General) from the post of A.G. I (General). Against names of all 5 persons, whose names appear in that order, the backward class/reserved category to which they belong has been mentioned. First condition thereafter is that the General Manager/Area Manager to ensure that caste certificates of promoted officials are verified. The perusal of order passed on 9/11/2010 by First Appellate Authority on appeal of present petitioner under Right to Information Act shows that said promotion order was issued promoting candidates on their own merits and not against reservation.

5. Various charts to which our attention has been invited by learned counsel for petitioner show that at the relevant time there was no backlog as such and the candidates belonging to reserved category

in excess were occupying the post of Manager (General), however, that by itself does not mean that there could not have been any reservation at the relevant time.

6. The respondents are justified in submitting that order of First Appellate Authority under Right to Information Act does not have effect of deciding representation made by petitioner. The respondents have come up with that stand in paragraph No.17 of their reply. It is further contended in said reply that petitioner is claiming promotion under the garb of judgment of this Court dated 1/11/2012 in Writ Petition No.2126/2010, mentioned supra. Shri Deshpande has submitted that employer has kept a separate seniority list of such persons whose services have been protected by the order of this Court. We do not want to go into merits of this aspect in present petition. The impugned order dated 24/2/2015 is a Note having subject maintaining of seniority separately in compliance to judgment of High Court in writ petitions including Writ Petition No.2126/2010. Note is prepared by Area Manager. It shows that in order to comply with the directions contained in the judgment, the seniority list separately has been prepared.

7. Preparation of said note, separate seniority list of such persons whose employment were protected has not been justified by pointing out any provision of law. The petitioner has, by amendment, prayed for quashing and setting aside of the said note as impugned order.

8. This Court has by its judgment dated 1/11/2012 found that petitioners were entitled to limited relief. Show cause issued to them were quashed and set aside and they were declared entitled to protection of appointment. It was also observed that if any benefits are granted to them after 28/11/2000 on the basis of their belonging to Scheduled Tribe, employer would be at liberty to withdraw those benefits and restore position as on 28/11/2000 .

9. Order dated 9/11/2009 promoting petitioners is definitely after 28/11/2000, however, question is whether after petitioner is restored to his position as on 28/11/2000, he could have been in zone of consideration on 9/11/2009. The second question will be whether there were vacancies reserved for backward class employees in promotional cadre of Manger (General) on 9/11/2009. Material

produced before this Court by petitioner, *prima facie*, shows that there were no such vacancies. The Information supplied to petitioner under the Right to Information Act specifically shows the promotion in general category i.e. open category.

10. It is, therefore, obvious that after restoring petitioner to the position as on 28/11/2000 his placement in the cadre of A.G. I (General) needs to be worked out and his further claim for promotion to the post of Manager (General) also needs to be examined. That will depend upon his falling within zone of consideration at the relevant time.

11. Impugned order dated 24/2/2015 does not show that such exercise was undertaken. It is, therefore, quashed and set aside. We direct respondents to undertake said exercise and complete it in accordance with law within next 3 months. Writ petition is, thus, partly allowed and disposed of. No costs.

JUDGE

JUDGE