

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

WRIT PETITION NO. 875 OF 2005

Smt. Rafia Begam Ansari W/o Sabbir
Ahmed Ansari,
Age : 53 Years, Occu. : Service,
R/o Inside Panchakki, Magrabhi House,
Near Ghati Hospital, Aurangabad. .. Petitioner

Versus

1. The State of Maharashtra,
Through the Divisional Commissioner,
Revenue Division, Aurangabad.
2. Zilla Parishad, Aurangabad,
Through it's Chief Executive Officer.
3. Smt. Hemlata Baliram Meshram,
Age: 51 Years, Occu.: Service,
R/o C/o C.E.O., Z.P., Aurangabad. .. Respondents

Mr. Ajay S. Deshpande, Advocate for the Petitioner.
Ms. Rashmi P. Gour, A. G. P. for the Respondent No. 1.
Shri. D. R. Irale Patil, Advocate for the Respondent No. 2.
Shri. Ajit B. Kadethankar, Advocate for the Respondent No. 3.

**CORAM : S. V. GANGAPURWALA AND
K. L. WADANE, JJ.**

DATE : 30TH NOVEMBER, 2016.

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

. The order reverting the petitioner from the post of
Assistant Child Development Officer, Integrated Child

Development Scheme (I.C.D.S.) to the post of Supervisor District Technical Services Class III (Social Welfare) under I.C.D.S. Scheme is assailed in the present writ petition.

2. The petitioner was promoted as an Assistant Child Development Project Officer under order dated 19.07.2001. However, vide order dated 15.01.2005, the petitioner was demoted to the post of supervisor.

3. Mr. Deshpande, the learned counsel for the petitioner submits that, in the provisional seniority list published on 01.01.1996, the petitioner is shown senior to one Meshram and also Gaherwar. So also in the final seniority list the petitioner is shown senior to Meshram and Gaherwar. The respondent No. 3 had filed an appeal before the Divisional Commissioner in a way challenging the promotion of one Gaherwar in her place. The Divisional Commissioner allowed the appeal and directed the respondent No. 2 to promote Meshram with effect from 21.02.1999. Consequent to the order of Divisional Commissioner, the respondent No. 2 on 15.01.2005 demoted the petitioner. According to the learned counsel the petitioner was not concern with the dispute between Meshram and Gaherwar. After considering the case of the petitioner, the petitioner was promoted on 19.07.2001. No cause existed for reverting the petitioner.

4. Mr. Iral Patil, the learned counsel for the respondent No. 2 submits that, it is not only the seniority that is relevant for promotion but even the performance has to be considered. The performance of Gaherwar was found to be better than the petitioner and Meshram. As such, Gaherwar was promoted. According to the learned counsel, the petitioner has an alternate efficacious remedy as per Rule 14 of the Zilla Parishad District Services (Discipline and Appeal) Rules.

5. Mr. Kadethankar, the learned counsel for the respondent No. 3 submits that, pursuant to the orders of the Divisional Commissioner, the respondent No. 3 has been promoted. The said order is not subject matter of challenge in the present writ petition.

6. We have also heard the learned Assistant Government pleader for the respondent/State.

7. It is true that while considering promotion seniority may not be the only criteria and the performance also would be relevant. In the present case, considering all these aspects, the petitioner was promoted as an Assistant Child Development Officer on 19.07.2001. It appears that, the petitioner is reverted only because the Divisional Commissioner had directed that the

respondent No. 3 herein should have been promoted in the year 1999. In the judgment delivered by the Divisional Commissioner, it was observed that, Meshram is senior to Gaherwar and ought to have been promoted. The authorities ought to have considered that, the petitioner is senior to both of them and was already promoted with effect from 19.07.2001. The petitioner only on the ground that Meshram is directed to be promoted could not have been reverted. The case of the petitioner ought to have been considered.

8. As the petitioner has already retired on attaining age of superannuation and since 2005 the petitioner has worked on the post on which the petitioner was reverted, we are not inclined to grant actual benefit with regard to the pay of the promotional post. However, the same shall be computed notionally for the purpose of retiral and pensionary benefits. The arguments of alternate remedy, now would not be available, as the writ petition is already admitted in the year 2005.

9. In the result we pass following order.

10. The action of reverting the petitioner under order dated 15.01.2005 is quashed and set aside. The petitioner shall be deemed to have continued on the post of Assistant Child Development Project Officer since 19.07.2001 and the increments

or otherwise shall be notionally computed till the age of retirement of the petitioner and the same be actually considered for the benefit and payment of retiral benefits including pension, gratuity, commutation of pension, leave encashment, etc. It is made clear that, we have not disturbed the post of the respondent No. 3.

Rule accordingly is made absolute in above terms. No costs.

Sd/-

[K. L. WADANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]

bsb/Nov. 16