

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4970 OF 2014

HANUMANT GANGARAM BARLAWAR
VERSUS
THE ZILLA PARISHAD, NANDED AND OTHERS

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Advocate for Petitioner : Shri Deshpande Ajay S.
Advocate for Respondent 1 : Smt. Kshirsagar Yogita
Advocate for Respondents 2 & 3 : Shri Nagargoje A.N.
AGP for Respondent 5 : Shri Kutti P.N.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: August 24, 2016

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PER COURT :-

1. The petitioner is aggrieved by the order dated 13.3.2014, delivered by the Divisional Commissioner, Aurangabad, by which, the appeal preferred by the petitioner, for seeking promotional benefits, has been dismissed and a direction is issued for verifying the caste certificate and the validity certificate of those candidates, who have already been granted the benefit of promotion.

2. The petitioner is aggrieved only to the extent of the rejection of his appeal and denial of promotional benefits under Clause 1 of the operative part.

3. Shri Deshpande, learned Advocate for the petitioner has submitted that the Post Recruitment Examination (PRE), at the time at which he passed the said examination, was the only criteria for promotion to the post of Sr. Assistant. Those who belonged to the Scheduled Castes or the Scheduled Tribes and were seeking promotion on the basis of such reservation, pursuant to passing the PRE, were required to submit their Caste / Tribe Validity Certificate.

4. He has voiced a serious grievance about promotion having been granted to nine persons, mentioned in paragraph No.8 of the memo of the petition. The said chart would indicate the dates of promotion and the Caste / Tribe validity certificate obtained.

5. He, therefore, submits that he has been subjected to factual and legal victimization by depriving him of a promotion after he passed his PRE in 1998. Respondent Nos. 2 and 3, who are junior to the petitioner have also been granted the promotion, purely on the basis of passing the PRE. Similar is the case of respondent No.4.

6. He further submits that the Government Resolution mandating production of validity certificate, as a precondition for

promotion post passing of the PRE, was introduced on 8.12.2003. A similar Government Resolution was subsequently introduced on 7.2.2006.

7. He further submits that on 24.5.1999, the State Government introduced certain Rules by way of an amendment and Sub-clause 3, below Rule 5 stood amended by introducing the consequence of not passing the examination. He, therefore, submits that after 24.5.1999, if a person passed the PRE, his promotion would have effect from the date of passing and if he does not pass the same, he would lose his seniority. The copy of the said amended Rules is taken on record and marked Exhibit "X" for identification.

8. He further submits that the Chief Officer, Zilla Parishad, by communication dated 13.6.2013, addressed to the Divisional Commissioner has stated that the petitioner would be senior, even to respondent No.2, considering the fact that the petitioner had passed his PRE prior to respondent No.2 and the date of appointment of the petitioner is of 1983. These recommendations have also been overlooked by the Divisional Commissioner and who has rejected the Appeal of the petitioner by the impugned order.

9. Learned Advocate appearing on behalf of respondent No. 1

does not dispute the communication dated 13.6.2013, issued by the first respondent acknowledging the seniority of the petitioner over respondent No.2. She has strenuously tried to support the impugned order on the ground that the Caste Validity Certificate was mandatory and the petitioner has been granted promotion on 18.3.2008, since he got his Tribe Certificate validated on the said date, though he has passed the PRE in 1998.

10. She had relied upon the affidavit-in-reply filed by respondent No.1 and submits that though the joining date of the petitioner is 7.11.1983 and he has passed his PRE in 1998, he could not have been given the promotion until he got his Tribe validity certificate.

11. Learned Advocate for respondent Nos.2 and 3 has adopted the submissions of respondent No.1 and has supported the impugned order.

12. Learned AGP on behalf of respondent No.5 submits that an affidavit-in-reply has been placed on record, indicating that the Caste / Tribe validity certificate was made necessary by the corrigendum dated 28.5.2001, issued by the Government of Maharashtra, through its Tribal Welfare Department. It is based on

these facts, that after the petitioner was recommended by the Departmental Promotion Committee, in its meeting dated 19.9.2003, he could not be granted the promotion, until his validity certificate was submitted on 29.2.2008.

13. Having considered the submissions of the learned Advocates as above, two things become apparent. Firstly, that the passing of the PRE was necessary for promotion. Secondly, after the corrigendum was issued by the Tribal Development Department on 28.5.2001, the Caste / Tribe validity certificate was required for granting promotion.

14. The case of the petitioner vis-a-vis the nine persons, who were promoted, will have to be compared on the basis of the above factors. The petitioner has passed his PRE on 27.12.1998. Respondent No.2 passed the PRE on the same date. Respondent No.2 was granted promotion on 18.8.2004, as a Sr. Assistant, though he acquired his Caste validity on 21.4.2009. The affidavit in reply dated 4.2.2016, filed by respondent No.1, does not in any way, explain this circumstance of granting promotion to respondent No.2 on 18.8.2004, when he did not have the Caste Validity Certificate. All other respondents and the other candidates are not comparable with the petitioner for the reason

that respondent No.3 had passed his PRE on 15.11.1992, respondent No.4 passed the PRE also on 15.11.1992, Shri B.K. Kujarwad and Smt. K.S.Nainwad were directly appointed as Sr. Assistants. As such, it appears that they cannot be compared with the petitioner.

15. This places the petitioner at par with respondent No.2 Shri Pandewad. His initial date of appointment is 21.11.1988 as a Peon in the Class IV category, promoted as Jr. Assistant on 9.1.1997 and on 18.8.2004 he was promoted as Sr. Assistant. He submitted his caste validity certificate on 21.4.2009. Learned Advocate for respondent No.1, though submits that Shri Pandewad has passed some competitive examination, the affidavit dated 4.2.2016, does not even whisper about this aspect. In fact, the communication dated 13.6.2013 at page 34 of the petition paper book, addressed to the Divisional Commissioner, by respondent No.1, considers the above aspects and hence respondent No.1 specifically concluded that the petitioner will be senior to respondent No.2 Shri Pandewad and his date of promotion as a Sr. Assistant shall be deemed to be 21.1.2004.

16. Considering the date of joining of the petitioner, his passing of PRE and even if the date of submission of validity certificate is

considered only for the sake of comparison, the petitioner would be senior to respondent No.2. It is noteworthy that respondent No.1 has recommended the deemed date of promotion for the petitioner w.e.f. 21.1.2004, since it appears that there are other employees above whom, the petitioner could be placed, considering the above factors.

17. The issue before the Divisional Commissioner was with regard to the demand of the petitioner that he should be given effect of promotion from 21.1.2004. As such, since respondent No.2 has been granted the effect of promotion as Sr. Assistant from 18.8.2004, the petitioner will, therefore, have to be granted the same benefits of promotion as Sr. Assistant from 21.1.2004 as has been recommended by respondent No.1 in his said communication dated 13.6.2013, which was placed before the Divisional Commissioner in response to the appeal filed by the petitioner.

18. The petitioner has retired on 30.4.2016 and as such, his seniority over respondent No.2, may not be of any consequence., nor could it cause any prejudice to respondent No.2. However, the petitioner shall be entitled to all incidental and consequential benefits and especially financial benefits by treating him as having

been promoted as a Sr. Assistant with effect from 21.1.2004. The impugned order dated 13.3.2014 is, therefore, quashed and set aside to the extent of Clause 1 of the operative part, which pertains to the petitioner.

19. In the event, by the effect of this order, the petitioner will be entitled to any further notional promotion/s, the same would be considered by respondents 1 and 5, while calculating his total financial benefits.

20. It is expected that as the petitioner has retired, this exercise of calculation of his financial benefits shall be completed within the period of four months from today.

21. This petition is, therefore, partly allowed.

(RAVINDRA V. GHUGE, J.)

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