

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5772 OF 2015

Bhatu Kashinath Patil,
Age 43 years, Occ. Service
R/o 57/58, Jaichand Nagar,
Korit Road, Nandurbar.

..Petitioner

Versus

1.The State of Maharashtra
Through its Secretary,
Rural Development Department,
Maharashtra State, Mantralaya,
Mumbai 32.

2. The Divisional Commissioner,
Nasik Division, Nasik.

3. The Zilla Parishad,
Nandurbar through its
Chief Executive Officer.

4. Shri D.N.Kunwar,
Development Officer,
Navapur, Dist. Nandurbar.

..Respondents

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Advocate for Petitioner : Shri S.S.Shinde
h/f Shri N.L.Choudhary

AGP for Respondents 1 & 2 : N.T.Bhagat

Advocate for Respondent 3 : Shri A.P.Yenegure
h/f Shri P.S.Patil

Advocate for Respondent 4 : Shri D.K.Rajput

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CORAM : RAVINDRA V. GHUGE, J.

Dated: December 06, 2016

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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties for quite
sometime.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. When this matter was heard on 30.6.2015, I had noted the contentions of the petitioners, in brief, as follows:-

“1. Heard.

2. Leave to place on record the judgment dated 4.4.2015, delivered by the Divisional Commissioner, Nasik in Revision Application No. 2 of 2015, within two weeks from today.

3. The brief contentions of the petitioner are as under:-

(a) He passed the departmental examination in 2004 and was entered in the select list for promotion.

(b) However, juniors were promoted in 2004 itself.

(c) His representations, dated 1.10.2005, 30.10.2005 and 2.9.2006 were not decided.

(d) He preferred Appeal before the Additional Commissioner Nasik, No. 74 of 2006, which was allowed by judgment dated 6.6.2007.

(e) *He was given the deemed date of promotion with effect from 2004 on 30.6.2004 by order dated 27.8.2007.*

(f) *The Chief Executive Officer of the Zilla Parishad, Nandurbar preferred Revision Petition No.2 of 2015 after a lapse of eight years, which is allowed by judgment dated 4.4.2015.*

(g) *By order dated 30.4.2015, recovery is initiated against the petitioner.*

4. *Issue notice to the respondents returnable on 24.7.2015.*

5. *Learned AGP waives service for respondents 1 and 2. Shri Patil, learned Advocate waives service for respondent No.3.*

6. *Till the next date of hearing in this matter, the order of recovery dated 30.4.2015 shall stand stayed."*

5. Before I advert to the submissions of the learned Advocates for the respective sides, I find it apposite to refer to Rules 14 and 15 of the Maharashtra Zilla Parishads District Services (Discipline and Appeal) Rules, 1964, which read as under:-

" 14. Appeals against the orders. (1) A Parishad servant may appeal against an order which -

(a) denies or varies to his disadvantage, his pay, allowances, pension or other conditions of service as regulated by any rules; or

(b) denies promotion to which he is otherwise eligible according to the rules applicable to him and which is due to him according to his seniority; or

(c) interprets to his disadvantage the provision of any such rule; or

(d) stops him at the efficiency bar in the time scale on the ground of his unfitness to cross the bar' or

(e) reverts him to a lower grade or post while officiating in a higher grade or post otherwise than as a penalty; or

(f) reduces or withholds the pension or denies the maximum pension admissible under the rules; or

(g) determines the pay allowances for the period of suspension to be paid to him on his reinstatement or determines whether or not such period shall be treated as a period spent on duty for any purpose;

to the Commissioner of the Division, if the order is passed by the Chief Executive Officer and to the Chief Executive Officer, if the order is passed by any authority subordinate to the Chief Executive Officer.

Explanation. - In this rule -

- (1) the expression "Parishad servant" includes a person who has ceased to be a member of a District service'*
- (2) the expression "pension" includes additional pension, gratuity and any other retirement benefit.*

15. Revision. -- *(1) A Parishad servant who is aggrieved by an order in appeal preferred by him under Rule 13 may make an application for the revision of that order, --*

- (a) to the Chief Executive Officer, if the order in appeal is passed by the Administrative Officer, the Head of the Department or the Deputy Chief Executive Officer;*
- (b) to the Commissioner of the Division, if the order in appeal is passed by the Chief Executive Officer;*
- (c) to the State Government, if the order in appeal is passed by the Commissioner of the Division :*

Provided that, the Parishad servant shall not be entitled to make such application against any order imposing any of the penalties specified in clauses (i) to (iii) and clause (viii) of Rule 4 or against an order of the Chief Executive Officer imposing the penalty specified in clause (iv) of that rule.

(2) A Parishad servant who is aggrieved by an order of the Chief Executive Officer in appeal preferred by him under Rule 14 may make an application to the Commissioner of the

Division for revision of the order.

Explanation. -- For the purpose of this rule, "subordinate authority" means in relation to the revisional authority being, --

(i) the Chief Executive Officer, the Social Welfare Officer, the Block Development Officer, the Revenue Officer, any authority subordinate to any of such Officers, the Deputy Chief Executive Officer, the Administrative Officer, the Head of Department or any authority subordinate to the Head of Department.

(ii) the Commissioner of the Division, the Administrative Officer, the Head of the department, the Deputy Chief Executive Officer, or the Chief Executive Officer;

(iii) the State Government, the Chief Executive Officer or the Commissioner of the Division."

6. It is in the backdrop of the above provisions, that the grievance of these litigating sides will have to be considered. I am not dealing with their contentions with regard to their dates of birth, their dates of appointments, their seniority and the marks obtained while being promoted as Village Development Officers since my observations are likely to affect their rights, as I am inclined to remit the matter back to the Divisional Commissioner for considering the deemed date of promotion granted to the petitioner herein from

30.6.2004.

7. The petitioner was aggrieved by the promotion granted to Shri M.R.Deo. Respondent No.4 herein Shri D.N.Kuwar is aggrieved by the deemed date of promotion granted to the petitioner. The Divisional Commissioner has passed an order on 24.3.2015, which has given rise to this proceedings. However, the basis of this proceeding is the Appeal No.74 of 2006, which was filed by the petitioners before the Divisional Commissioner and his appeal was allowed by order dated 6.6.2007. Respondent No.4, who is aggrieved by the same, contends that though the dispute between the petitioner and Shri Deo was the subject matter of Appeal No.74 of 2006, respondent No.4 is senior to the petitioner as well as Shri Deo. He was kept in the dark and he had no idea about the pending proceedings.

8. As the order dated 6.6.2007 is at issue, the Revision that was filed by the Chief Executive Officer, Zilla Parishad ought to have been under Rule 15(1)(c). What has been erroneously done is that the Chief Executive Officer approached the same Divisional Commissioner by preferring his Revision under Rule 15(2) presuming that the order passed by the Additional Divisional Commissioner can be challenged before the Divisional Commissioner. Rule 15(2) provides that the Zilla Parishad servant aggrieved by the order of the Chief Executive Officer would make an application to the Commissioner of the

Division. Factually, the order dated 6.6.2007 and the corrigendum order dated 22.8.2007 were passed by the Additional Commissioner and could not have been a subject matter of Revision under Rule 15(2).

9. In the light of the above, it is apparent that confusion has been created by the Chief Executive Officer by approaching the Divisional Commissioner in Revision Application No.2 of 2015.

10. In the light of the above, the order dated 4.4.2015, delivered by the Divisional Commissioner in Revision Application No.2 of 2015 is quashed and set aside and the Revision stands disposed off as being untenable in law. Consequentially, the order dated 30.4.2015 passed by the Chief Executive Officer is also quashed and set aside.

11. Considering the grievances of the litigating sides, the order dated 6.6.2007, delivered by the Divisional Commissioner, Nasik in Appeal No.74 of 2006 is also quashed and set aside. The Appeal No.74 of 2006 filed by the petitioner Shri B.K.Patil shall stand restored to the file of the Divisional Commissioner, under the following directions:-

(A) The petitioner who has preferred the Appeal No.74 of 2006 shall add Shri D.N.Kuwar as well as Shri M.R.Deo, if not already added, as party - respondents.

(B) The Divisional Commissioner need not issue notice to Shri D.N.Kuwar as he undertakes to appear before the authority.

(C) The litigating sides shall appear before the Divisional Commissioner, Nasik in Appeal No.74 of 2006 on 23.12.2016 at 11.00 AM.

(D) If it is brought to the notice of the Divisional Commissioner by any of the litigating sides that there are few other similarly situated employees, who will have to be heard in these proceedings, the petitioner shall add them as respondents and the Divisional Commissioner shall issue notices to them for appearing in the matter.

(E) The Divisional Commissioner shall decide the issue of promotions to the position of Village Development Officers in the light of the rival claims of the litigating sides, on their own merits and without being influenced by any orders passed earlier by any authority.

(F) Needless to state, after the Divisional Commissioner decides the Appeal 74 of 2006, the said decision shall be acted upon by the authorities.

12. The Writ Petition is partly allowed and Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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