

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2056 OF 2016**

Balkrishna B. Mandale

.. Petitioner

V/s.

The Chief Executive Officer and ors.

.. Respondents.

Ms Indrayani Koparkar for the Petitioner.

Mr. N.P. Deshpande for Respondent No.1.

Ms S.S. Bhende, AGP for the Respondent- State.

Ms Anjali Helekar for UOI.

**CORAM: DR. MANJULA CHELLUR, C.J. &
M.S.SONAK, J.**

DATE : 20 DECEMBER 2016.

P.C.

1] The petitioner is before us seeking promotion from the date when one Smt. Shingate was promoted in the year 1990. Apparently, the petitioner has joined as a Peon with effect from 28th October 1986 and it is not in dispute that Smt. Shingate was joined as a Junior Clerk on 14th February 1980. Apparently, the petitioner was promoted to the post of Junior Clerk only with effect from 11th June 1990. In that view of the matter, Smt. Shingate was ten years senior in the post of Junior Clerk when compared to the present petitioner. The petitioner claims that the Government Resolution (GR) dated 5th March 2002 was never implemented and if the same was to be implemented strictly complying with the reservation policy so far as physically handicapped persons, the petitioner ought to have been promoted with effect from 5th March 2002.

3] It is also not in dispute that the implementation of the GR dated 5th March 2002 was commenced only in the year 2009 and therefore,

the petitioner has lost the chance of promotion with effect from 2002, therefore, the petitioner is before this Court seeking deemed promotional benefits in every aspect of the matter from the date of GR dated 5th March 2002.

4] What we notice is that the so-called competitor of the petitioner is one Smt. Shingate, who is not made party to the proceedings. The petitioner joined the services as a Peon from 1986 and was promoted from time to time and as on today, the petitioner is working as a Section Officer with the establishment of the 1st respondent. Smt.Shingate was appointed as a Junior Clerk in the year 1980 ten years prior to the promotion of the petitioner as Junior Clerk Smt. Shingate is also a person with disability. The petitioner was promoted to the post of Section Officer on 18th December 2010 in the normal course of promotion and till that date, the petitioner never made a claim with regard to deemed promotion with effect from 2002 from the date of GR. If respondent Nos.1 and 2 did not comply with the GR dated 5th March 2002 and if there were promotions in between 5th March 2002 and 18th December 2002, on which date he was promoted to the post of Section Officer, the petitioner ought to have approached this Court contending that he lost the chance of promotion in the reserved category and he ought to have been considered for promotion in between. If Smt.Shingate was promoted, at least at that time, the petitioner ought to have approached this Court. Having got the promotion as Section Officer on 18th December 2010, he kept quiet for another six years and now he is coming before this Court claiming the benefits as a physically challenged, person, with effect from 2002, we cannot appreciate his stand. If the case of the petitioner was to be considered, at this stage, it would unsettle many other promotions

given to other persons by giving a deemed date of promotion to the petitioner.

5] As already stated above, there must be clear indication whether there was one post meant for the Section Officer when Smt. Shingate was promoted and whether there was possibility of carving out or demarcating certain percentage for the persons falling under the zone of the special statute. In the absence of such particulars and availability of percentage of posts meant for persons with disabilities, we fail to understand how the petitioner can claim the reliefs now sought in the petition. In the absence of such claim from 2002 till 2016 and in the absence of particulars whether there was possibility of demarcating certain posts for physically challenged persons, we are of the opinion that none of the reliefs sought by the petitioner could be entertained. Accordingly, the petition is dismissed.

(CHIEF JUSTICE)

(M.S.SONAK, J.)