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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 307 OF 2007

Malojirao B. Bhosale ... Petitioner
Vs.
The State of Maharashtra and ors. ... Respondents

Mr. Sandeep V. Marne for the Petitioner.
Mr. Vishal Thadani, AGP for State-Respondent Nos.1 to 4.

CORAM : V. M. KANADE, AND
M. S. SONAK, JJ.
DATE : AUGUST 08, 2016.

JUDGMENT (*PER M.S. SONAK, J.*)

1] The challenge in this petition is mainly to the judgment and order dated 1 October 2004 made by the Maharashtra Administrative Tribunal (MAT), Mumbai in Original Application No. 44 of 2004, to the extent the relief of promotion with effect from 1994 came to be denied to the petitioner.

2] Mr. Sandeep Marne, learned counsel for the petitioner, submitted that the impugned judgment and order has in fact accepted the contention of the petitioner that the petitioner was unjustifiably by-passed in the matter of consideration for promotion to the post of

Deputy Draftsman-cum-Deputy Secretary on the sole basis that the petitioner was on deputation in some other department. Mr. Marne submitted that once this contention came to be accepted, the petitioner was entitled for promotion to the said post with effect from 1994, since, some persons junior to the petitioner were promoted in the year 1994. Mr. Marne submitted that in pursuance of directions in the impugned judgment and order, the petitioner was ultimately considered for promotion with effect from 2004. However, the petitioner was found not to be fit for promotion. Mr. Marne has submitted that in case the petitioner were to be considered for promotion with effect from 1994, which was due date, then, the petitioner's confidential report for years prior to 1994 would have been taken into consideration and the petitioner would have surely been found fit for promotion. Therefore, Mr. Marne submitted that non-consideration of the case of the petitioner for promotion with effect from 1994 constitutes an error apparent on the face of record.

3] We have considered the submissions of Mr. Marne. We have also perused the record as also the impugned judgment and order. We are, however, satisfied that the petitioner has failed to make out any case warranting interference with the impugned judgment and order under Articles 226 and 227 of the Constitution of India.

4] The MAT, has quite consciously molded the reliefs taking into consideration the peculiar facts and circumstances of the petitioner's case. The petitioner was not considered for promotion in the year 1994, possibly, on the mistaken premise that he held no lien on his parent post. The cause of action, with regard to such non-consideration therefore, arose in the year 1994. The petitioner has instituted the original application only in the year 2004. In the meanwhile, several other employees, some of whom junior to the petitioner, were considered and promoted. The MAT records that the petitioner did not react for a period of almost ten years. The juniors who were promoted in the meanwhile were also not impleaded as respondents. However, with a view to balance the equities, the MAT directed that the case of the petitioner be considered for promotion with effect from 2004. In pursuance to this direction, the case of the petitioner was in fact considered for promotion. However, the petitioner was not found to be fit for promotion. The petitioner has chosen not to challenge this decision of the DPC.

5] The decision in case of ***Shri. Parvez Qadir Vs. Union of India – (1975) 4 SCC 318***, is not applicable to the facts and circumstances of the present case. The said decision holds that for purpose of initial recruitment the confidential report of the officer as on the date of initial recruitment is to be considered and not the confidential reports available till the date of selection. In this case,

since, there is no warrant to interfere with the directions to consider the case of the petitioner for promotion with effect from 2004, the respondents have rightly considered the ACRs, in the context of year 2004. The decision in case of ***Parvez Qadir (surpa)*** is therefore, of no assistance to the petitioner.

6] If all the aforesaid circumstances are cumulatively considered, then there is no error, much less any error apparent on the face of record in the reasoning of the MAT. No case is therefore, made out to interfere with the impugned judgment and order. Accordingly, we dismiss the petition. There shall however, be no order as to costs.

[M. S. SONAK, J.]

[V. M. KANADE, J.]