

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.539 OF 2016

Shri Rajesh Dnyandeo Waghmode,)
Sr.No.161/41, Adarsh Coony Road 1,)
Tingre Nagar, Pune – 411015.).. Petitioner

Versus

1. The Chief Secretary,)
Government of Maharashtra,)
Mantralaya, Mumbai.)
2. Chief Commissioner,)
Pune Municipal Corporation,)
Shivajinagar, Pune.).. Respondents
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Shri Shamrao N. Patole i/b Ms. Vidya G. Langade for the Petitioner.
Shri Rhishikesh Mukund Pethe for the Respondent No.2.

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CORAM : A.S. OKA & P.D. NAIK, JJ

DATE ON WHICH SUBMISSIONS WERE HEARD : 28TH APRIL 2016

DATE ON WHICH JUDGMENT IS PRONOUNCED: 2ND SEPTEMBER 2016

JUDGMENT (PER A.S. OKA, J)

1. The Petitioner was appointed as a Junior Grade Clerk on the establishment of the Pune Municipal Corporation by an order dated 31st July 2003. The Petitioner is relying upon the certificate of disability issued by the Superintendent of Sassoon General Hospital, Pune by

which his permanent disability was assessed at 55%. By an order dated 21st May 2008, the Petitioner was confirmed in the employment.

2. On 3rd July 2010, the Petitioner made a representation to the Commissioner for the Persons with Disabilities (for short “the said Commissioner”) making a grievance that the claim of the Petitioner for promotion has not been deliberately considered. On 15th July 2011, the Commissioner after hearing the Municipal Secretary of the Pune Municipal Corporation passed an order directing the Municipal Corporation to consider the case of the Petitioner for grant of promotion. A Resolution was passed by the Standing Committee of the Pune Municipal Corporation on 13th September 2011 by which a deemed date of promotion i.e. 29th April 2008 was granted to the Petitioner to the post of Clerk. As the Petitioner was denied consequential benefits, representations were made by the Petitioner. A communication was issued by the Commissioner on 4th January 2013 directing the Municipal Corporation to pay salary and allowances admissible to the post of Clerk to the Petitioner from the deemed date of promotion. On 4th March 2013, the Petitioner was further promoted to the post of Committee Clerk. The challenge in this Petition under Article 226 of the Constitution of India is to the Resolution of the Standing Committee dated 13th September 2011 on the ground that monetary reliefs have been denied to the Petitioner from the deemed

date. There is a further prayer made for directing implementation of the orders passed by the Commissioner on 15th July 2011 and 4th January 2013.

3. The learned counsel appearing for the Petitioner submits that though the Petitioner ought to have been promoted with effect from 29th April 2008, he was granted promotion by a Resolution dated 13th September 2011 by giving a deemed date. Therefore, monetary reliefs could not have been denied to the Petitioner.

4. There is a reply filed by Shri Sunil Parkhi, the Municipal Secretary of the Pune Municipal Corporation. In the said affidavit, a stand has been taken that the Petitioner is not entitled to get any monetary benefits with effect from 29th April 2008 admissible to the promotional post. The learned counsel appearing for the Municipal Corporation firstly submitted that the Commissioner had no jurisdiction to issue the directions which he has issued. He relied upon a decision of this Court in the case of *The State of Maharashtra, through the Joint Director, Vocational Education and Training Office, Nashik v. Shri Kuber Govindrao More*¹ and submitted that the powers of the Commissioner for the Persons with Disabilities is very limited. He submitted that as the Petitioner has not worked on the promotional post, he is not entitled to get any monetary benefit.

¹ Decided on 20th October 2015 in WP No.9125 of 2014

5. We have considered the submissions. The Petitioner has not disputed the correctness of the deemed date fixed as 29th April 2008 of the promotion to the post of Clerk. The issue which survives for consideration is whether the Petitioner is entitled to salary and other allowances admissible to the promotional post with effect from the deemed date i.e. 29th April 2008. As far as the seniority of the Petitioner is concerned, in Paragraph XII of the affidavit of Shri Sunil Parkhi, the Municipal Secretary of the Pune Municipal Corporation, he has stated thus:

“XII. In view of the above factual matrix and considering the promotion of Shri Vishnu Kadam, the docket was put up making it clear that the Petitioner will not be entitled for any monetary benefit from the Deemed Date of Promotion i.e 29th April 2008. I say that the Petitioner's seniority will be counted from 29th April 2008 for further promotional avenues.”

6. Thus, there is a clear statement that for the purposes of seniority, the Petitioner shall be deemed to have been appointed to the post of Clerk with effect from 29th April 2008. As stated earlier, the Petitioner was promoted with effect from 4th March 2013 to the post of Committee Clerk.

7. Government Resolution dated 29th October 2001 is tendered across the bar. The said Government Resolution is about the

payment of salary to the promotional post from the deemed date. The said Government Resolution refers to the earlier Government Resolution dated 14th September 1982 which provided that if there is a time gap of more than three months between the deemed date and the actual promotion, the Promotee will be entitled to the benefits of salary and other allowances from the deemed date.

8. The Government Resolution dated 29th October 2001 provides for deleting that part of the Government Resolution dated 14th September 1982 which provided for grant of back wages from the deemed date of promotion provided the promotion is actually granted three months after the deemed date. Prior to that, there was a Government Resolution dated 25th February 1965. The said Government Resolution records the following decision of the Government.

“Government has considered this question and decided that in such cases the Government servants concerned should be deemed to have been promoted to higher posts from the date from which they would have been promoted to higher posts from the date from which they would have been promoted but for their wrongful supersession i.e. from the date from which their juniors who were promoted by superseding them started to officiate in such posts and they should be allowed pay in such posts as if they were promoted on the dates on which their juniors were promoted and also paid arrears of pay and allowances from such dates.”

9. The said Government Resolution was modified on 14th September 1982 by providing that the arrears will be payable provided the time gap between the actual promotion and the deemed date of promotion is of more than three months. That portion of the Government Resolution dated 14th September 1982 was deleted by the Government Resolution dated 29th October 2001.

10. Coming back to the facts of the case, the Commissioner in his order dated 15th July 2011 recorded a finding that while conducting the process of promotion for the year 2007-2008, the case of the Petitioner for promotion was not considered. On the basis of the decision of the Commissioner, a note was put up before the Standing Committee in its meeting dated 13th September 2011. In the said note, it is mentioned that the Petitioner is suffering from 55% permanent physical disability. It is stated that the post of Clerk is a promotional post for which the feeder cadre is of Junior Clerks. It is stated that the process of promotion to the said post was conducted in January 2008 and concluded in the year 2009. The said note further records that one Shri Rajendra Parate was promoted to the post of Clerk on 29th April 2008 as per the seniority. In the year 2009, the promotion was granted to one Shri Vishnu Kadam with effect from 26th February 2009. It is stated that the said Shri Rajendra Parate retired in August 2011. In the

light of the order of the Commissioner dated 15th July 2011, it was recorded that the deemed date of 29th April 2008 will have to be given to the promotion of the Petitioner to the post of Clerk.

11. Based on the judgment of this Court in the case of ***The State of Maharashtra v. Shri Kuber Govindrao More***, it was submitted that the Commissioner has no adjudicatory powers and at the most he can take up the matter with the concerned Authorities by submitting a report. The argument that the order of the Commissioner dated 15th July 2011 is illegal is not available to the Municipal Corporation in the facts of the present case for the two reasons. Firstly, the said order has been acted upon by the Municipal Corporation way back on 13th September 2011 without any protest. Secondly, only direction issued by the Commissioner was to take a decision on the proposal submitted before the Standing Committee within a period of two months. Further it is observed that if it is decided to give promotion to the Petitioner, the order of promotion be issued within one month from the date of decision of the Standing Committee and a decision should be taken for fixation of the deemed date of promotion. Therefore, there is no direction to grant promotion. It is true that in the letter dated 4th January 2013 at Exhibit-I issued by the Commissioner, there is a direction to pay salary and other benefits admissible to the promotional post from the deemed date. Such a direction could not have been

issued in the light of the aforesaid decision of this Court in the case of ***Kuber Govindrao More***. In the present case, there is an independent prayer made in this Petition for issuing a direction to pay salary from the deemed date of promotion.

12. The question is whether the Petitioner is entitled to the benefit of salary and allowances payable to the promotional post from the deemed date.

13. On this aspect, the law has been laid down by the Apex Court in the case of *Ramesh Kumar v. Union of India and Others*². The argument before the Apex Court was that in such a case, the principle of “no work no pay” will apply as the Promotee had not worked on the promotional post from the deemed date of promotion. This argument has been considered by the Apex Court in Paragraphs 14 and 15, which read thus:

“14. In normal circumstances when retrospective promotions are effected, all benefits flowing therefrom, including monetary benefits, must be extended to an employee who has been denied promotion earlier. So far as the monetary benefits with regard to retrospective promotion are concerned that depends upon case to case. In *State of Kerala v. E.K. Bhaskaran Pillai* [(2007) 6 SCC 524 : (2007) 2 SCC (L&S) 487] , this Court held that the principle of “no work no pay” cannot be

² (2015)14 SCC 335

accepted as a rule of thumb and the matter will have to be considered on a case-to-case basis and in para 4, it was held as under: (SCC p. 527)

“4. ... We have considered the decisions cited on behalf of both the sides. So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before court or tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the court may grant sometimes full benefits with retrospective effect and sometimes it may not. **Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors.** However, it is very difficult to set down any hard-and-fast rule. The principle ‘no work no pay’ cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also.”

15. We are conscious that even in the absence of statutory provision, normal rule is “no work no pay”. In appropriate cases, a court of law may take into account all the facts in their entirety and pass an appropriate order in consonance with law. **The principle of “no work no pay” would not be attracted where the**

respondents were in fault in not considering the case of the appellant for promotion and not allowing the appellant to work on a post of Naib Subedar carrying higher pay scale. In the facts of the present case when the appellant was granted promotion w.e.f. 1-1-2000 with the ante-dated seniority from 1-8-1997 and maintaining his seniority along with his batchmates, it would be unjust to deny him higher pay and allowances in the promotional position of Naib Subedar.”

(emphasis added)

14. In the present case, the deemed date of 29th April 2008 is fixed as a similarly placed person (Shri Rajendra Parate) was promoted to the post of Clerk. Thus, after accepting that the Petitioner was entitled to the promotion to the post of Clerk from the deemed date that the benefit of the deemed date has been granted to the Petitioner. Thus, the Municipal Corporation has committed an error by not considering the case of the Petitioner for promotion to the post of Clerk which was carrying higher pay. For no fault on his part, the Petitioner was denied promotion from the said date. A note was put up by the Municipal Secretary on 23rd June 2010 before the Standing Committee proposing to grant promotion to the Petitioner to the post of Clerk. However, the same was placed before the Standing Committee belatedly on 13th September 2011 only after a direction was issued by the Commissioner on 15th July 2011. In the light of the principles laid down by the Apex Court in the case of Ramesh Kumar, the benefit of pay to the promotional post from the deemed date cannot be totally

denied especially when in the affidavit-in-reply filed by the Municipal Corporation, it is specifically contended that the seniority of the Petitioner to the promotional post will be counted on the basis that he was promoted to the said post with effect from 29th April 2008. Therefore, we propose to grant benefit of salary of the promotional post from 23rd June 2010.

15. Hence, the Petition must succeed. We propose to direct the Pune Municipal Corporation to pay costs quantified at Rs.15,000/- to the Petitioner and we pass the following order:

ORDER :

- (a) We hold that the Petitioner is entitled to salary and allowances admissible to the post of Clerk with effect 23rd June 2010;
- (b) We direct the Pune Municipal Corporation to make fixation of the pay of the Petitioner on the footing that he was promoted to the post of Clerk with effect from 29th April 2008. The Petitioner will be entitled to all the benefit of the promotional post with effect from 29th April 2008 except the actual salary and allowances;

- (c) The Respondents shall pay the difference in salary and allowances to the Petitioner with effect from 23rd June 2010;
- (d) All other consequential benefits shall be provided to the Petitioner on the basis of the deemed date;
- (e) We grant time of six months to the Pune Municipal Corporation to pay the aforesaid amount to the Petitioner;
- (f) On the failure of the Pune Municipal Corporation to pay the said amount to the Petitioner within the stipulated period of six months, the amount shall carry interest at the rate of 8% per annum from the date of the institution of the Petition till the actual date of payment of amount;
- (g) The Rule is made absolute on above terms. The Pune Municipal Corporation shall pay costs of Rs.15,000/- to the Petitioner within a period of six weeks from today.