

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO.721 OF 2011

1. The State of Maharashtra
through the Government Pleader,
High Court, Bench at Aurangabad
2. The Director (Vocational Education),
Directorate of Vocational Education &
Training, Mahapalika Marg, Mumbai.
3. The Deputy Director,
Vocational Education & Training,
Regional Office, Old Agra Road,
Nashik ... PETITIONERS

VERSUS

Mr. Prakash Janardan Zarekar,
Age major, Occu. Full Time Teacher,
Government Technical High School,
Varangaon, District Jalgaon ... RESPONDENTS

.....
Mrs. M.A. Deshpande, A.G.P. for petitioners
Shri A.N. Nagargoje, Advocate for respondent
.....

CORAM: ANOOP V. MOHTA AND
 SUNIL K. KOTWAL, JJ.

DATED: 8th June, 2017.

ORAL JUDGMENT (Per Anoop V. Mohta, J.):

1. Taken out from Final Hearing Board.

2. The petitioners/ State have challenged the judgment and order passed by the Maharashtra Administrative Tribunal (MAT), Bombay, Bench at Aurangabad in Original Application No.931/2009, dated 21/4/2010, whereby respondent's (original applicant's) application has been allowed and the impugned reversal order dated 5/9/2008 was quashed and set aside. That resulted into a direction to restore his position to the post of Full Time Teacher with continuity and back wages, with further direction of entitlement of difference of salary and all other consequential benefits.

3. The scope of jurisdiction to deal and decide the order passed by the MAT, as settled, is very limited. After hearing the learned counsel for the parties and after going through the averments and the documents and the reasons so provided in the impugned judgment and order, we see there is no case made out by the State to interfere with the reason as there is no case of perversity and/or contrary to the law and record.

4. The respondent was appointed on 25/9/1990 as a Full Time Teacher. He was posted as Lecturer in Engineering and joined on promotional post on 12/7/1998. The representation was made on 12/11/2000 as per the condition mentioned in the order. The respondent worked on the promotional post. The

petitioner Department, however, issued a show-cause-notice on 13/10/2003 and on ground that the promotion order was wrong and against the recruitment rules. The respondent replied the same and prayed for requisite benefits and supported his entitlement.

5. On 5/9/2008, after 5 years, the reversion order in question was passed. The respondent, therefore, preferred Original Application before the MAT. After hearing the parties, the impugned order was passed, thereby the Original Application of the respondent has been allowed.

6. This Court, as noted, though admitted the petition on 7/2/2011, not granted any interim relief. That resulted into implementation of the order passed by the Tribunal in favour of respondent. The respondent must have been enjoying the same without any disturbance as the impugned order remained intact till this date, practically for more than 8 years. The fact remained that the respondent had worked on the post from 12/7/1998 till 5/9/2008. He got all the benefits from the date of order passed by the Tribunal, dated 21/4/2010.

7. Even otherwise, as noted, the learned Tribunal has accepted the third mode of promotion by transfer to the post.

The respondent was eligible for the appointment as J.S./ A.E.S., though the same was not from the only feeder cadre as contended by the learned A.G.P. appearing for the State. The learned Tribunal found that the appointment/ transfer on promotion was well within the framework of service regulations and the documents by referring to various office notes and correspondences as referred in para Nos.6 to 8 of the judgment. These reasons and documents reflect the application of mind to the record including the seniority list so referred and relied upon by the learned counsel for the respondent. We are also inclined to observe that, the modes available, out of which, even if one mode referred and utilised by the Department at the relevant time while promoting the petitioner along with others, there is no illegality. The respondent was on the post for more than 8 to 9 years as referred in the reasons. We find there is no perversity in the order. The learned Tribunal has also rightly noted that the time which the Department has taken after issuing show-cause-notice to take adverse order/ against the respondent was unaccepted.

8. The learned Tribunal has also, in para No.9 dealt with various other decisions of the Tribunal, whereby, in similarly situated circumstances, such order of reversion was not accepted. The very recruitment rules of the post of L.E./ A.E.S.

and J.S.-cum-J.A.A. were referred by the State Government in para No.9. The Tribunal has applied its mind even to the rules, regulations and given its opinion/ interpretation based upon the other supporting documents and material. There is no case to disturb the interpretation so given while passing the order.

9. Therefore, taking overall view of the matter, and for the reasons so recorded above, we are inclined to accept that the order of reversion so passed was unsustainable and it was rightly quashed and set aside by granting the benefit by the learned Tribunal, and further by passing all the consequential benefits as mentioned in impugned order.

10. Writ Petition is, therefore, rejected. Rule discharged.
No costs.

(SUNIL K. KOTWAL)
JUDGE

(ANOOP V. MOHTA)
JUDGE

fmp/