

**IN THE HIGH COURT OF JUDICATURE
AT BOMBAY**

BENCH AT AURANGABAD.

WRIT PETITION NO.6248 OF 2017

The State of Maharashtra
and others. ... Petitioners.

Versus

Avinash Kashiram Shirsath ... Respondent.

...

Mrs.A.V.Gondhalekar, Additional Government
Pleader for the Petitioners.
Mr.S.S.Patil, advocate for Respondent-Caveater.

...

**CORAM : S.V.GANGAPURWALA AND
MANGESH S. PATIL, JJ.**

Date : 14.08.2017.

PER COURT :

1. The present Respondent had filed Original Application before the Maharashtra Administrative Tribunal, Bench at Aurangabad, seeking pay fixation by extending benefit of time bound promotion with effect from 20.1.2005.

2. The Respondent also challenged the communication dated 29.11.2010, whereby the petitioner communicated the Respondent that the time bound benefit can not be granted. The Tribunal allowed the Original Application directing the present petitioners to grant time bound promotion to the Respondent with effect from 20.1.2005.

3. Mrs.Gondhalekar, learned Additional Government Pleader submits that the annual Confidential reports of the Respondent for the period 2000-2001 to 2004-2005 were adverse. The Respondent was also responsible for malpractice. The benefit of time bound promotional pay-scale is available only if the said employee is eligible for promotion, however, can not be promoted on account of non-availability of post. As the Respondent was not qualified and eligible to be promoted on account of his adverse ACRs., the question of giving him benefit of time bound promotion pay-scale does not arise. The Tribunal has lost sight of the said aspect.

4. Mr.Patil, learned counsel for the Respondent supports the order.

5. We have considered the submissions. The proposition that the time bound promotional pay-scale can be granted to the employee on completion of 12 years if there is no avenue open for promotion and the said employee is qualified and eligible to be promoted need not be debated. The same is settled proposition.

6. In the present case it has been observed that the ACRs. for the period 2000-2001 to 2004-2005 were not complete and the ACRs. for the period 2001-2002 were not made available by Sindudurga office of the Respondent. The communication dated 29.11.2010, issued by the present petitioners categorically states the said aspect. It is also not disputed by the petitioners that these ACRs. at no material point of time were communicated to the Respondent till the applicant got retired on attaining the age of superannuation. The ACR for the year 2003-04 is incomplete. The Tribunal has consider the ACRs.

placed on record. It is also observed that the present Respondent is not at all responsible for non-availability of ACRs. Even it has been observed that the Superintending Engineer, Dhule requested the Chief Engineer, PWD Nasik that the Respondent should be granted time bound promotion with effect from 20.1.2005, since he has completed 12 years of his service on the said date. The said recommendation itself shows that the applicant was entitled to claim time bound promotion on the said date.

7. Considering the totality of the facts as stated above, the Tribunal has not committed any error in allowing the Original Application.

8. The Writ Petition is dismissed. No costs.

(MANGESH S. PATIL, J.)

(S.V.GANGAPURWALA, J.)

