

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

WRIT PETITION NO.3294 OF 2005

Gous Mohiyoddin s/o. Moinoddin,
Age : 60 years, Occ. Pensioner,
resident of House No.5-2-58,
Fatte Burruj, Nanded
Dist. Nanded ..Petitioner

Vs.

1. The Municipal Commissioner,
Nanded-Waghala Municipal
Corporation, Nanded
2. The State of Maharashtra,
through Urban Development
Department, Mantralaya,
Mumbai
3. The Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai - 400 032 ..Respondents

--

Mr.G.R.Syed, Advocate for petitioner

Mr.S.V.Kurundkar, Advocate for respondent no.1

Mrs.V.N.Patil-Jadhav, AGP for respondent nos.2 and 3

--

**CORAM : T.V. NALAWADE AND
SANGITRAO S. PATIL, JJ.
DATE : JUNE 21, 2017**

JUDGMENT (PER SANGITRAO S. PATIL, J.) :

Heard the learned Counsel for the parties.

2. The petitioner joined the service of respondent no.1 – Municipal Council as a Jawan on 08.02.1964. He was promoted as Bill Collector on 01.04.1969. One Jagjitsingh was given promotion as the Tax Inspector on 08.02.1980, even though he was junior to the petitioner in the feeder-cadre. Thereafter also, promotions were given to some more employees who were juniors to the petitioner. Therefore, the petitioner made representations to respondent no.1 from time to time, for getting deemed date of promotion and arrears of pay and allowances. However, his claim was not considered. He then made representations to respondent nos.2 and 3 for getting the said relief. It was ultimately directed by respondent nos.2 and 3, to respondent no.1 to extend the deemed date of promotion to the petitioner from 08.02.1980. However, he was denied the arrears of pay and allowances on getting revised

pay scale on the basis of his deemed promotion. He, therefore, filed the present Writ Petition.

3. The learned Counsel for the petitioner pointed out to the Circular dated 11.06.1993 issued by the General Administration Department, Government of Maharashtra, Mantralaya, Mumbai, wherein it is mentioned that in case a junior employee is promoted wrongly by superseding a senior eligible employee, such senior employee should be given deemed date of promotion with arrears of pay and allowances in view of the Circular dated 25.02.1965. He submits that in view of this Circular, the petitioner was entitled to get arrears of pay and allowances consequent upon getting the deemed date of promotion.

4. On the other hand, the learned Counsel for respondent no.1 submits that the Circular dated 25.02.1965 has been superseded by the Circular dated 11.06.1993 and accordingly, the petitioner is not entitled to get the arrears of pay and allowances

consequent upon his getting deemed date of promotion.

5. We have perused the Circular dated 11.06.1993. There is specific reference of Circular dated 25.02.1965, whereunder the arrears of pay and allowances are liable to be paid to a senior employee who has been wrongly superseded by his junior employee in the matter of promotion. The Circular dated 11.06.1993 nowhere states that the Circular dated 25.02.1965 has been superseded. The Circular dated 11.06.1993 simply states that the matters in respect of extending deemed date of promotion should not be considered and decided at the level of the departments of Mantralaya and that they should be referred to the General Administration Department and Finance Department for sanction and after getting sanction from these departments only, the orders should be issued. There is absolutely no mention in the Circular dated 11.06.1993 that a senior employee who has been

superseded by his junior in the matter of promotion and who has been given deemed date of promotion is not entitled to get arrears of pay and allowances pursuant to his getting deemed date of promotion. When the petitioner was wrongly superseded by his junior employee, when he was given deemed date of promotion with effect from 08.02.1980 and when his pay was fixed accordingly as per the pay scale applicable from time to time, as mentioned in the order dated 10.05.2002 passed by respondent no.1, there was no legal impediment in the way of the petitioner in getting the arrears of pay and allowances on the basis of the pay fixed as per the said order dated 10.05.2002.

6. In the above circumstances, the Writ petition is liable to be allowed. The petitioner is entitled to get the arrears of pay and allowances as admissible to him because of the pay fixation as per the order dated 10.05.2002 passed by respondent no.1.

7. In the result, we pass the following order :-

- (i) The Writ Petition is allowed.
- (ii) Respondent no.1 shall pay the arrears of pay and allowances to the petitioner as fixed in the order dated 10.05.2002, within a period of four months from today.
- (iii) Rule is made absolute in the above terms.
- (iv) No costs.

[SANGITRAO S. PATIL, J.]

[T.V. NALAWADE, J.]