

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5029 OF 2004

Jaichand S/o Manikrao Jain,
Age-41 years, Occu-Service - Lab Assistant
in Z.P.High School, Bembli,
Tq. and Dist.Osmanabad

-- PETITIONER

VERSUS

1. The Chief Executive Officer,
Zilla Parishad, Osmanabad,
Dist.Osmanabad

2. The Additional Divisional Commissioner,
Aurangabad Division, Aurangabad

-- RESPONDENTS

Mr.Ajay Deshpande h/f Mrs.M.A.Deshpande, Advocate for the
petitioner.

Mr.N.T.Bhagat, AGP for respondent No.2.

Mr.K.J.Ghute Patil, Advocate for respondent No.1.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 09/02/2017

ORAL JUDGMENT :

1. None has appeared for respondent No.1 / Zilla Parishad despite adjourning this matter on a few occasions. The petitioner and the learned AGP have already concluded their oral submissions on 02/02/2017.

2. The petitioner is aggrieved by the order passed by the

Additional Commissioner/Respondent No.2 dated 11/05/2004 by which the Appeal filed by the petitioner challenging the order dated 29/07/2002 passed by respondent No.1 refusing to grant time scale promotion, has been rejected.

3. The learned AGP appearing on behalf of respondent No.1 has strenuously supported the impugned order. He submits that there is no error committed by respondent No.2. Considering the bad record of the petitioner and the criminal proceedings against him, the impugned orders cannot be termed as being perverse or erroneous.

4. After considering the submissions of the learned Advocates and upon going through the record available, I find that the petitioner has not been granted the time scale promotion (TSP) as per the GR dated 18/04/1995 made effective from 01/10/1994, owing to the criminal proceedings against him.

5. The petitioner joined respondent No.1 / Zilla Parishad as a 'Laboratory Assistant' on 27/02/1982. The GR dated 18/04/1995 provides for granting TSP to those employees who had completed twelve years on the said post. On 26/02/1994, the petitioner has completed 12 years as a 'Lab Assistant'.

6. The petitioner, upon realizing that he has been deprived of TSP, started making representations from 1996 for claiming TSP. By communication dated 27/07/2002, respondent No.1 informed the petitioner that his claim is rejected on account of adverse CR. In this backdrop, the petitioner had preferred his appeal before respondent No.2.

7. This Court, while admitting the petition on 02/09/2004, expedited the hearing but did not grant any relief to the petitioner.

8. There is no dispute that the performance of an employee for the last 5 years is to be considered while assessing his eligibility for TSP. The said 5 years are to be calculated preceding the date on which the candidate has completed 12 years which I find from the report submitted by respondent No.1 dated 08/01/2003 addressed to respondent No.2 as follows :-

[a] 1993-1994 - Satisfactory

[b] 1992-1993 - Good

[c] 1991-1992 - Good

[d] 1990-1991 - Satisfactory

[e] 1989-1990 - Satisfactory

Despite the above, respondent No.1 has mentioned in the said

communication that the confidential report of the petitioner does not indicate satisfactory work and hence he is deprived of TSP.

9. It is equally undisputed that the petitioner was placed under suspension for the period 03/09/1989 upto 05/06/1991. A criminal case initiated against him has led to his acquittal. In the impugned order dated 11/05/2004 delivered by respondent No.2, it is specifically observed that after the acquittal of the petitioner from the criminal case, he had appealed to the Additional Divisional Commissioner, Aurangabad as against his period of suspension and by the order dated 21/11/1992 passed by the said Authority, the entire suspension period has been treated as a duty period.

10. Considering the above, I find that respondent Nos. 1 and 2 have recorded that the blemish on the petitioner with regard to a criminal case has been washed away and his suspension period is also treated as a duty period. There is no dispute that the respondent No.1 employer did not initiate disciplinary proceedings against the petitioner and wholly banked upon the criminal case, which has led to his acquittal.

11. Considering the above, I find that the impugned order passed

by respondent No.1 dated 29/07/2002 and order dated 11/05/2004 passed by respondent No.2 are perverse and erroneous. Gross injustice and manifest inconvenience is caused to the petitioner. Keeping in view the law laid down by the Hon'ble Apex Court in the matter of Syed Yakooob Vs.K.S.Radhakrishnan and others [AIR 1964 SC 477] and in the matter of Surya Dev Rai Vs. Ram Chander Rai, [2003(6) SCC 682], this is a fit case for causing interference.

12. This petition, is therefore, allowed. The impugned orders dated 29/07/2002 and 11/05/2004 are quashed and set aside and the respondents are directed to grant TSP to the petitioner w.e.f. 26/02/1994 with all consequential benefits within a period of 12 weeks, failing which the monetary benefits shall attract interest @ 6% w.e.f. 27/02/1994 and the said amount of interest shall be paid from the salary of the Chief Executive Officer, Z.P. Osmanabad. So also, the respondent Zilla Parishad shall consider the petitioner's eligibility for further benefits of TSP, in the event there is no other legal impediment.

13. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)