

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

WRIT PETITION NO.11186 OF 2010

Chandrakant s/o Jagannath Mahajan
Age 48 years, Occ. Service,
R/o Yogeshwar Nagar,
Near Apang Sanstha, Jalgaon,
District Jalgaon

... PETITIONER

VERSUS

1. The State of Maharashtra
through the Secretary for
Rural Development Department,
Mantralaya, Mumbai
2. The Divisional Commissioner,
Nashik Division, Nashik
3. The Chief Executive Officer,
Zilla Parishad, Jalgaon,
District Jalgaon

... RESPONDENTS

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Shri A.V. Hon, Advocate for petitioner
Mrs. M.A. Deshpande, A.G.P. for respondents No.1 and 2
Shri Vijay Sharma, Advocate for respondent No.3.
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CORAM: R.D. DHANUKA AND
SUNIL K. KOTWAL, JJ.

DATED: 12th September, 2017.

ORAL JUDGMENT (PER R.D. DHANUKA, J.) :

1. By this Writ Petition filed under Article 226 of the
Constitution of India, the petitioner prays for a writ of certiorari

for quashing and setting aside the impugned communications dated 15/10/200 and 30/10/2010, issued by the Chief Executive Officer, Zilla Parishad, Jalgaon and the Divisional Commissioner, Nasik Division, Nasik respectively. The petitioner also seeks a writ of mandamus for order and directions against the Zilla Parishad to forthwith promote the petitioner to the post of Senior Assistant by giving him proper placement in the seniority on the post of Senior Assistant and also giving all consequential service benefits to which the petitioner is entitled to.

2. Some of the relevant facts for the purpose of deciding this Writ Petition are as under :

On 6/2/1982 the petitioner has joined the duty as Junior Assistant with the Zilla Parishad, Jalgaon. One Miss. Ashalata Kiraje had filed a complaint against the petitioner with Anti Corruption Bureau, alleging that the petitioner had demanded bribe for her transfer. The petitioner was placed under suspension on 9/7/2002. A departmental enquiry was initiated against the petitioner by the Zilla Parishad. On 11/6/2003, in departmental enquiry conducted by the Zilla Parishad, the petitioner was exonerated from all the charges levelled against him.

3. Criminal proceedings were filed before the Sessions court (Special Case No.15/2002). By an order dated 5/8/2004, passed by the learned Special Judge, Jalgaon, the Sessions Court exonerated the petitioner on merits and passed an order of acquittal. The State Government filed an appeal and has impugned the said order dated 5/8/2004 (Criminal Appeal No.854/2004) in this Court and the same is admitted and is pending for hearing and final disposal.

4. The petitioner filed a Writ Petition in this Court bearing No.1166/2005 for writ of mandamus and for an order and directions against the Zilla Parishad to reinstate the petitioner in service on his original post forthwith by revoking the suspension order dated 9/7/2002. By an order dated 22/9/2005, passed by the Division Bench of this Court, the said Writ Petition was made absolute in terms of prayer clause (B). It is not in dispute that, pursuant to the order passed by this Court, the petitioner has been reinstated in service by the Zilla Parishad. After reinstating the petitioner in service, the Chief Officer of Zilla Parishad passed an order on 15/10/2010, refusing to grant promotion to the petitioner to the post of Senior Assistant by giving proper placement in the seniority. Being aggrieved by

these two communications, the petitioner has filed this petition.

5. Learned counsel for the petitioner submits that, though the petitioner has been reinstated in service in compliance of the order dated 22/9/2005, passed by the Division Bench of this Court, which has attained finality, the Zilla Parishad has not granted promotion to the petitioner to the post of Senior Assistant though the petitioner was entitled to the said promotion in accordance with the seniority of the petitioner merely on the ground that the State Government has already filed appeal against the order of acquittal passed by the Sessions Court. It is submitted that, there is no stay granted by this Court in the said Appeal No.654/2004 filed by the State Government. He submits that, merely on the ground that the appeal is filed, the petitioner cannot be denied any promotion to the said post of Senior Assistant.

6. Learned counsel for the Zilla Parishad invited our attention to the affidavit-in-reply filed by the Zilla Parishad on 5/2/2011 and submits that, since the appeal filed by the State Government is still pending, the petitioner cannot be granted any promotion.

7. It is not in dispute that, when this Court allowed the said Writ Petition No.1166/2005 filed by the petitioner, on 22/9/2005, the appeal filed by the State Government i.e. Criminal Appeal No.854/2005 was already pending before this Court. In spite of the said order, this Court directed the Zilla Parishad to reinstate the petitioner in service. The said order dated 22/9/2005, passed by this Court has not been challenged by the Zilla Parishad before the Supreme Court.

8. In our view, since the petitioner was already exonerated in the departmental enquiry as far back as on 11/6/2003 and has been already reinstated, the respondent No.3 could not have refused to grant promotion to the petitioner though the petitioner was eligible for said promotion on the post of seniority. In our view, merely because the appeal filed by the State Government against the order of acquittal is pending, petitioner cannot be refused to be promoted to the post.

9. We, however, make it clear that the promotion of the petitioner to the relevant post would be subject to outcome of Criminal Appeal No.854/2004 filed by the State Government. In our view, the impugned communication of the Zilla Parishad is totally illegal and without authority of law. We, therefore, pass

the following order :

10. Writ Petition is made absolute in terms of prayer clauses (B) and (C). It is, however, made clear that, the promotion being granted to the petitioner would be subject to outcome of Criminal Appeal no.854/2004 filed by the State Government against the order of acquittal of the petitioner passed by the Sessions Court. If the order of acquittal in favour of the petitioner is set aside in Criminal Appeal No.854/2004, the petitioner would return the monetary benefits, if any, granted pursuant to such promotion in favour of the petitioner and would be reverted to the post held by him today

11. The Zilla Parishad to act on authenticated copy of this order. This order shall be complied within within a period of two weeks from today. No order as to costs.

(SUNIL K. KOTWAL)
JUDGE

(R.D. DHANUKA)
JUDGE

fmp/