

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7307 OF 2013

Mr. Shrikant Sahebrao Jagtap ..Petitioner

Vs.

The Member Secretary and Others ..Respondents

Ms. Vaishali K. Jagdale, for the Petitioner.

Mr. Ajit R. Pitale, for the Respondent No.1.

Mrs. M. S. Bane 'B' Panel counsel for Respondent Nos.2 and 3.

CORAM :- **S.C. DHARMADHIKARI &**
B.P.COLABAWALLA, JJ.
DATE :- **FEBRUARY 22, 2017.**

P. C.:

This Petition under Article 226 of the Constitution of India seeks a deemed date of promotion for the Petitioner.

2 The admitted facts would enable us to conclude that the Petitioner is not entitled to any relief. The Petitioner as well as one Mr. Ghule were appointed on 4th February,

1989 on the post of Divisional Accountant. The Petitioner joined the post on 8th February, 1989 and Ghule joined on 18th February, 1989. In interse seniority, the Petitioner claims to be senior than Mr. Ghule. The Petitioner claims that the deemed date of promotion ought to be 23rd July, 1993 on which date one Mr Khilare was promoted as Accounts Officer against a promotional post reserved for the scheduled caste. Since 1st September, 1990, there was non-availability of the Scheduled Tribe Candidate, the post of Divisional Accountant was therefore kept vacant in Respondent No.1's office and till today it is vacant. The Petitioner was appointed as a Divisional Accountant on 4th February, 1989. As per Government Resolution dated 20th July, 1981, the Petitioner was entitled for promotion to the post of Accounts Officer after completing three years on the post of Divisional Accounts Officer. The promotional posts as per the roaster system was reserved for the Scheduled Tribe category. The post could not be filled in for want of availability of an eligible Scheduled Tribe candidate. Relying upon the two Government Resolutions, it is contended that the

interchangeability is permitted. That is how the Petitioner would proceed to urge that since the post which was reserved for Scheduled Tribe as per the roster point could not be filled in eventually as per the provisional seniority list and interchangeability, the Petitioner was promoted. However, the Petitioner claims to be entitled to the deemed date of promotion on par with Mr Khilare. That is how paragraph 14.7 at page 8 of the Writ Petition would read thus:-

“14.7: That after assigning seniority to the Petitioner in the provisional seniority lists dated 1990 & 1999 on the post of Divisional Accountant, the Petitioner immediately submitted his representation in the office of Respondent No.1 on 11.02.2013, 01.07.2013, 08.03.2013 & 04.07.2013 inter alia the Petitioner has demonstrated that he is entitled to deemed date of promotion wef 23.07.1993 i.e. when Mr. Khilare of SC category was promoted on the post of Accounts Officer through Divisional Accountant cadre. These representations were kept pending by the Respondents.”

3 Reliance is placed upon several Government Resolutions which permit interchangeability. However, in

the affidavit in reply, it is explained by the first Respondent that there is no merit in the Writ Petition. The Petitioner was appointed on the post of Divisional Accountant with effect from 8th February, 1989. As per the recruitment rules, the next channel or promotional post available to the Petitioner is that of Account Officer. In terms of the recruitment rules prevailing then the Divisional Accountants who completed four years in service were eligible to be promoted as Accounts Officer. The Petitioner completed four years eligibility period in 1993. Though the Petitioner was appointed against a post reserved for Scheduled Tribe by applying the rule of interchangeability, the Petitioner forgets that Khilare has been promoted to the post of Accounts Officer on 23.07.1993 against a reserved post. Admittedly, Khilare is the candidate belonging to the Scheduled Caste category. The Petitioner may complain that the roaster point for Scheduled Tribe was kept vacant due to non-availability of a Scheduled Tribe candidate. Mr. Khilare was promoted in 1993 but the fact remains that the post as per roaster point and reserved for the Scheduled Tribe has to be carried forward and for number

of recruitment years specified in the Government Resolution. That is how it was carried forward and eventually the Petitioner was promoted to the said post on 12th January, 1999. Once this factual position emerging from record and explained in paragraph 11 of the affidavit is placed before us, then, we do not see any substance in the Petitioner's grievance. The Petitioner cannot be granted a deemed date over and above Mr Khilare who was promoted by appointing him against a reserved post meant for Scheduled Caste. His promotion was therefore not on the basis of interchangeability. The Petitioner's promotion is by applying the rules of interchangeability and he definitely cannot still a march in seniority over Mr Khilare. In such circumstances, there is no merit in the Writ Petition and it is dismissed.

(B. P. COLABAWALLA, J.) (S. C. DHARMADHIKARI, J.)