

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.1166 OF 2017

Krishna s/o Punjaramji Shrikhande
Aged about 52 years,
Occupation: Service, working
as Civil Judge (Senior Division)
and Addl. Chief Judicial Magistrate
at Pusad, District: Yavatmal, Maharashtra
and R/o Government Quarters,
Pusad, Near Tahsil Office,
Taluka: Pusad, District: Yavatmal,
State of Maharashtra
Pin Code- 445 204.

.....Petitioner

Versus

1 High Court of Judicature at
Bombay, Through its
Registrar General, having office
of Registrar General, High Court,
Mumbai 400 032.

2 The Registrar General,
High Court of Judicature at Bombay,
having office of the Registrar General,
High Court, Mumbai 400 032.

3 State of Maharashtra,
Through the Principal Secretary,
Law & Judiciary Department,
Mantralaya, Mumbai- 400 032

.....Respondents

Mr. Abhijeet A. Desai with Ms. Vrushali Maindad, Advocates
for Petitioner.

Mr. Prasad S. Dani, Senior Counsel with Ms. Leena Patil,
Advocates for Respondent Nos.1 and 2.

Ms. Geeta Shastri , AGP for Respondent No.3-State.

**CORAM : B.R.GAVAI &
SANDEEP K. SHINDE, JJ.**

DATE : November 30, 2017.

JUDGMENT : [Per: Shri Sandeep K. Shinde, J.]

The Petitioner who is the judicial officer has been informed by the Disciplinary Authority to be “cautious and careful in future” vide communication dated 15.4.2014. This communication is under challenge. The Petitioner has sought various reliefs including grant of deemed date of promotion as Civil Judge (Senior Division) with effect from 27.4.2011.

2 The Petitioner was appointed as Civil Judge Junior Division and Judicial Magistrate First Class in November, 1995. A show-cause notice was issued to him on 13.9.2007. It was replied by him on 15.11.2007. That after six years i.e., in July, 2012 charge-sheet was filed. The Petitioner was otherwise due for promotion as Civil Judge Senior Division in 2008; but was not promoted since enquiry was pending. In August, 2012 and 2013, he made representations to the High Court making a grievance regarding enquiry being pending for long time and for withholding his promotion on that count and requesting to grant the same. Since the Petitioner heard

nothing, he had filed Writ Petition No.2319 of 2014 basically challenging the charge-sheet dated 5.7.2012 and complaining for withholding his promotion. It appears during the pendency of the Writ Petition, charge-sheet itself was dropped on 15.4.2014. Resultantly, the Petitioner was permitted to withdraw the Petition with a liberty to voice his grievance about promotion, by making representation.

3 That on 17.6.2014, the Petitioner was promoted as Civil Judge Senior Division.

4 The Petitioner made a representation to the Respondents on 22.8.2016 requesting :

(I) Grant ACP-II since 2005 in the cadre of Civil Judge Junior Division,

(II) His promotion as Civil Judge Senior Division be given effect from year 2006 by restoring his seniority.

(III) That since departmental enquiry and charge-sheet has been dropped, he may be considered for a promotion in the cadre of District Judge.

5 Vide communication dated 4.1.2017, the Petitioner was informed by the Respondents that his

representation was placed before the Hon'ble Administrative Judges Committee and the same were rejected except to the extent of grant of second assured pay-scale. He was informed that ACP shall be subject to the consideration of the Committee independently in the light of guide-lines.

6 Aggrieved by the rejection of representation and letter of caution issued dated 15.4.2014, this Petition is filed.

7 The Respondent has filed the counter and contended;

(i) That on complaint of one Shri Darda, preliminary enquiry was conducted by the learned District Judge-II, District: Yavatmal. Report was placed in the meeting of Disciplinary Committee held on 3.9.2007 wherein it was decided to issue show-cause notice.

(ii) That the learned Principal Judge, Yavatmal submitted his report in April, 2009 and after considering the material, the Disciplinary Committee decided in March 2012 to initiate regular departmental enquiry against the Petitioner.

(iii) Charge-sheet and statement of imputation dated 5.7.2012 were served upon the Petitioner. Thereupon the Petitioner filed his defence on 7.8.2012. This material was again placed in the meeting of the Disciplinary Committee held on 8.4.2014 wherein decision was taken to close the file but to issue caution to the Petitioner to be careful in future. Accordingly, it was communicated to the Petitioner on 15.4.2014.

8 In so far as the Petitioner's claim for seniority in the cadre of Civil Judge Senior Division from 2006 is concerned, the Respondents contended that in June, 2006 names of 86 judicial officers were approved for promotion to the post of Civil Judge Senior Division on ad-hoc basis. In the said select list, the Petitioner was at Serial Number 72; However, only 50 judicial officers were promoted and remaining 36 judicial officers were awaiting their orders of promotion. It is contended that the said list was scrapped as per the decision of Administrative Judges Committee dated 18.12.2007 and fresh selection process for promotion to the post of Civil Judge Senior Division was initiated. That the

Petitioner was considered in 2008 for promotion in the fresh selection process. The list of 134 judicial officers was approved in the meeting held on 2.5.2008 for promotion to the post of Civil Judge, Senior Division. In the said selection list, the Petitioner was at Sr.No.137 and hence, was not selected in that process.

9 The Respondents further contended that new selection process for the post of Civil Judge, Senior Division was held in the year 2010-2011 wherein, the Petitioner was selected on 7.01.2011 subject to vigilance clearance and sealed cover procedure.

10 Respondents further contended that the Petitioner was selected for the post of Civil Judge, Senior Division and was given appointment order on 17.6.2014 on closure of enquiry.

11 Heard the learned counsel for the Petitioner and the learned counsel for the Respondent-High Court. Perused the pleadings.

12 Admittedly, in the year 2008 the Petitioner was eligible and due for promotion as Civil Judge Senior Division. Indisputably, he was issued show-cause notice in September, 2007 and decision to close the enquiry was taken on

15.4.2014. Admittedly, though the charge-sheet was filed in July, 2012 and regular enquiry was never held but in 2014, a caution was issued to the Petitioner "to be careful in the future". That as such, there was long and unexplained delay on the part of the Respondents for not completing the enquiry against the Petitioner. Indisputably, the Petitioner was selected in the selection process for promotion to the cadre of Civil Judge Senior Division in January, 2011 but was not promoted in view of pending enquiry. There is nothing on record to indicate delay in completing the enquiry was anyway attributable to the Petitioner herein. The Respondents could not explain satisfactorily or otherwise for not concluding the enquiry soon after the report was submitted by the Principal District Judge, Yavatmal in April, 2009. The Respondent did not offer any explanation as to why the Disciplinary Committee did not conclude the enquiry soon after the Petitioner was selected for promotion to the cadre of Civil Judge Senior Division in January, 2011. That since, actual posting as Civil Judge Senior Division was subject to vigilance clearance and sealed cover procedure, it was expected that the Respondents were to complete the enquiry soon thereafter. However, from January, 2012 till 8.4.2014, the Respondents

did nothing. In other words, nearly for two years and three months, Petitioner was was not promoted for want of enquiry report.

13 Chronology of the events as stated hereinabove undoubtedly reveals three facts namely:

(I) That the Petitioner was selected and promoted to the cadre of Civil Judge Senior Division on 7.1.2011;

(II) That the Petitioner was not appointed in the said cadre since enquiry was pending;

(III) That the Disciplinary Committee on 8.4.2014(i.e. Two years and three months after selection of the Petitioner) closed the enquiry and decided to issue 'caution' to the Petitioner 'to be careful in future';

14 In our view, inordinate delay on the part of Respondents in concluding the enquiry within reasonable period has caused prejudice to the interest of the Petitioner. The Respondents were aware that though the Petitioner was selected as Civil Judge Senior Division but was not promoted on account of pending enquiry. The Respondents in the circumstances at-least ought to have taken the steps to

complete the enquiry soon after January, 2011. Record, however, shows that the Respondents did nothing for long period of two years and three months. Respondents could not justify delay. At the same time, the Petitioner cannot be deprived of his legitimate right to seek the posting to the promotional post, though selected in January, 2011. That in other words, right accrued to secure posting on account of his selection to the post of Civil Judge Senior Division has not been fructified for no fault on his part but solely because there was unreasonable delay on the part of Respondents.

15 In the case of **Prem Nath Bali v. Registrar High Court of Delhi and Another** reported in (2015) 16 **Supreme Court Cases 415**, it was held that it is duty of employer to ensure that departmental enquiry initiated against delinquent employee is concluded within shortest possible time by taking priority measures, as far as possible within six month which may further be extended to 1 year in certain circumstances. In this case, employee of the High Court of Delhi was placed under suspension for a long period of nine years and after holding the enquiry was inflicted with major penalty of compulsory retirement. Pension of the Petitioner in the said case was fixed by excluding the period of

suspension, i.e, nine years 26 days while calculating qualifying service. The Apex Court while dealing with the grievance of the Petitioner therein has held in paragraphs 24,25 and 28 as under:

“24 One cannot dispute in this case that the suspension period was unduly long. We also find that the delay in completion of the departmental proceedings was not wholly attributable to the appellant but it was equally attributable to the respondents as well. Due to such unreasonable delay, the appellant naturally suffered a lot because he and his family had to survive only on suspension allowance for a long period of 9 years.

25 We are constrained to observe as to why the departmental proceeding, which involved only one charge and that too uncomplicated, have taken more than 9 years to conclude the departmental enquiry. No justification was forthcoming from the respondents' side to explain the undue delay in completion of the departmental enquiry except to throw blame on the appellant's conduct which we feel, was not fully justified.

28 Keeping these factors in mind, we are of the considered opinion that every employer (Whether State or private) must make sincere endeavour to conclude the departmental enquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such

proceedings and as far as possible it should be concluded within six months as an outer limit. Where it is not possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time-frame then efforts should be made to conclude within the reasonably extended period depending upon the cause and the nature of inquiry but not more than a year."

16 In view of the facts aforesaid, we are of the considered opinion that the Petitioner was entitled to be posted to the promotional post of Civil Judge Senior Division from the date of his selection, i.e., 7.1.2011 and not from 17.6.2014. Merely because enquiry was closed in June, 2014 by the Respondents by issuing letter of caution that itself would not deprive the Petitioner to claim seniority in the cadre of Civil Judge Senior Division from the date of his selection.

17 The Petition is, therefore, partly allowed. We, therefore, hold:

(I) It is held and declared that the Petitioner is deemed to have been promoted as Civil Judge Senior Division in the selection process which was conducted for the year 2010-

2011;

(II) The Petitioner shall be placed in the category of Civil Judge Senior Division as per his seniority-cum-merit treating to have been selected in the selection process conducted in the year 2010-2011.

(III) Needless to state that all necessary consequences shall follow.

(SANDEEP K. SHINDE, J)

(B.R.GAVAI, J)