

IN THE COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.4978/2016

(The State of Maharashtra and another vs. Dr.Ashok Gajanan Lanjewar)

Office Notes, Office Memoranda of
 Coram, appearances, Court's orders
 of directions and Registrar's orders

Court's or Judge's order

Mrs. Ketaki Joshi, AGP for petitioners
 Mr. R.V. Shiralkar, Adv. For Respondent

**CORAM : B.P. DHARMADHIKARI &
 MRS. SWAPNA JOSHI, JJ.
DATED : 30th January, 2017.**

Heard learned AGP, Mrs. Ketaki Joshi, AGP for petitioners
 and learned Advocate Mr. R.V. Shiralkar, for Respondent.

2. The only question to be looked into is, whether the Maharashtra Administrative Tribunal is justified in directing the petitioner-State, to consider entitlement of respondent to promotion, as is directed in paragraph 8 of its judgment dated 4th August, 2015. The said paragraph reads as under :

“8. The respondents in their communication dtd. 11/11/2005 as well as in their reply to the O.A. have stated that the applicant's case for regular promotion will be taken up before the Establishment Board when it meets next. Considering that the applicant had been holding the promotional post of Professor on an ad-hoc basis since 9.7.2004 till his retirement even though his promotion was against a clear vacancy, we direct the respondents to hold a meeting of the Establishment

Board for considering the case of the applicant for promotion against the vacant post of Professor of Preventive and Social Medicine at the IGMCI in terms of the G.R. dtd.30/4/1991 within 3 months of receipt of this order. If the Establishment Board finds the applicant fit for promotion, respondents will grant him regular promotion to the post of professor effective from the date he held the post with all consequential benefits.”

3. Perusal of judgment does not reveal a challenge that after 2003 promotion, employer was obliged to hold meetings of DPC annually and those meetings have not been held. Learned counsel for the respondent has produced before us the Government Resolution dated 23rd July, 1985 which envisages such exercise to be undertaken annually. According to him, a post was already lying vacant and hence the employee could have very well been promoted on that post without casting any additional financial burden on public revenue.

4. According to learned A.G.P in absence of specific challenge, the petitioner did not get opportunity to place its stand on the record.

5. The Maharashtra Administrative Tribunal has not specifically found that a vacancy existed and therefore entitlement of employee to be promoted could have been considered against that vacancy. As the Government Resolution dated 23 July 1985 was not filed, it has not looked into that Government Resolution. The State Government also did not get necessary opportunity to

point out its decision in the matter.

6. In this situation, we set aside the order dated 4th August, 2015 and restore Original Application No.173/2006 back to file of M.A.T. Parties are directed to appear before the MAT on 2nd March 2017. The employee is permitted to amend his pleadings so that respondent-State (before MAT) also gets due opportunity to rebut those contentions.

7. The MAT thereafter shall attempt to consider the need of issuing directions to consider entitlement of petitioner for deemed promotion afresh. Effort shall be made to complete this exercise within next three months.

8. Writ Petition is,thus, partly allowed and disposed of. No costs.

JUDGE

JUDGE

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