

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2841 OF 2014

Ganesh @ Maruti Daulatrao Meshram	...Petitioner
Versus	
The State of Maharashtra and ors.	...Respondents

Mrs. Vaishali Jagdale for the Petitioner.
Mr.N.C. Walimbe, AGP for the Respondents / State.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

DATE : 03.07.2018.

ORAL JUDGMENT:

- 1] Heard learned counsel for the parties.

- 2] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

- 3] The challenge in this petition is to the judgment and order dated 3.10.2013 made by the Maharashtra Administrative Tribunal (MAT), Mumbai dismissing the petitioner's O.A. No. 113 of 2012 seeking benefits under the Time Bound Promotional Scheme (TBPS).

4] Since, one of the reasons for denial of benefits of TBPS scheme to the petitioner was the pendency of disciplinary proceedings against him, this court, by order dated 7.2.2017, directed the respondents to conclude the departmental proceedings as expeditiously as possible and preferably within six months from the date of the order. After some delay, learned AGP has placed on record the communication dated 02.07.2018 from the State Government, which states that the enquiry is complete and certain charges are held as proved against the petitioner. The communication states that the show cause notice has been issued to the petitioner and further action will follow upon receipt of reply by the petitioner.

5] Ms Vaishali Jagdale, learned counsel for the petitioner, however, submits that since the petitioner was appointed as Sectional Engineer on 1.4.1990 and since the petitioner completed 12 years service on 1.4.2002, there was no reason to deny the petitioner at least the first financial up-gradation after completion of 12 years service. She submits that even the first departmental proceeding was initiated against the petitioner some time in the year 2003 and such

enquiry, in fact exonerated the petitioner of all the charges levelled against him. She points out that the petitioner's case is comparable to that of Shri. D.G. Hole and the respondents have practised hostile discrimination against the petitioner.

6] Mr. N. C. Walimbe, learned AGP for the State, points out that initially the benefit of TBPS could not be awarded to the petitioner because he failed to produce the Caste Validity Certificate within the prescribed period. He points out that in all, there were atleast three departmental enquiries were pending against the petitioner for misappropriation of funds. He points out that even a FIR has been lodged against the petitioner in the police station for misappropriation of funds. He submits that in the light of pendency of such departmental enquiries, there was no question of grant of benefit of TBPS to the petitioner. He submits that were the petitioner to be exonerated of such departmental enquiries, only then, would the question arise of award of TBPS, but not any earlier. He submits that there is absolutely no error in the view taken by the MAT and therefore, this petition may be dismissed.

7] The rival contentions now fall for our consideration.

8] From the record, it appears that the departmental proceedings were pending against the petitioner in the year 2002 itself, i.e., before the petitioner completed 12 years of service in the grade. Merely because the communication in this regard may have been served upon the petitioner slightly after the expiry of 12 years, i.e., in the year 2003, that by itself, does not entitle the petitioner to insist upon the benefits of TBPS scale.

9] The record also indicates that in all, there were three departmental enquiries pending against the petitioner. No doubt, the record also indicates that in one of the enquiry, the petitioner was exonerated. The MAT has taken into consideration all this material and has rightly observed that the issue of TBPS can be considered, if and when the petitioner is exonerated in all such departmental enquiries.

10] In terms of communication dated 2.07.2018, it appears that the charges have been held as proved against the petitioner in one of the departmental enquiries. No

doubt, though the enquiry is completed, the disciplinary proceedings have not yet attained finality. Therefore, we do not deem it appropriate to make any observations in that regard.

11] In the light of material on record, we cannot say that the view taken by the MAT suffers from any jurisdictional error or perversity. For all these reasons, therefore, we dismiss this petition. Rule is discharged. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

Dinesh
Sadanand
Sherla

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