

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

W.P. NO. 5325 OF 2018

The State of Maharashtra & Ors. .. Petitioners

Vs.

Shri. Suhas Shreepad Atre & Anr. .. Respondents

....
Mr. M.M.Pabale AGP for Petitioners
Mr. R.V. Bansode Advocate for Respondent No.1
....

**CORAM : NARESH H. PATIL, CHIEF JUSTICE &
M.S.KARNIK, J.**

DATED : NOVEMBER 19, 2018

ORAL ORDER [PER NARESH H. PATIL, C.J.]:

1. The Petitioners challenge the order passed by the competent authority i.e. Commissioner under the provisions of Section 18 of the Rights of Persons with Disabilities Act, 2016 (for short "the Act"). The Respondent No.1 was appointed as a Laboratory Assistant with Petitioner No. 4 in the year 1983. He was qualified in B.Sc. (Chemistry). The Respondent No.1 claims to be a disabled person. He has suffered 53% disability to his left

hand. According to Respondent No.1, as he completed 12 years of service in the year 1995, he was entitled for promotion but he was not given promotion. Under the Policy of the State i.e. Assured Career Progress Scheme, the Respondent No.1 was given benefit of promotional post from the year 1996 onwards. The Respondent No.1 completed further 12 years of service in the year 2005 and it is submitted that he ought to have been given further pay-scale but he was denied the said benefit which was conferred on him only in the year 2017.

2. In the meanwhile, the State adopted a stand that the said post is an isolated one and steps were taken to recover the amounts disbursed to Respondent No.1. With this grievance, Respondent No.1 approached the Competent Authority - Commissioner (Disability).

3. After hearing the contesting parties, the Commissioner (Disability) passed reasoned order dated 9.10.2017. Being aggrieved thereby, the Petitioners preferred the present Writ Petition.

4. The learned AGP referred to ground (II) & (VII) in the Petition.

Ground (II) & (VII) in the Petition, read as under:

“(II) The subject matter as to consider Respondent No.1 for promotion and upgradation of his pay scale is well within the administration of Petitioners, particularly within the jurisdiction of Petitioner Nos. 3 and 4 as separate and independent establishment. Any person against whom an administrative order, in service matter has been issued has to approach the Maharashtra Administrative Tribunal, in view of provisions under Section 15 of the Administrative Tribunal Act, 1985. Therefore, the order passed by the Respondent No.2 is without jurisdiction and without having any authority.

(VII) The Respondent No.2 committed error in not considering the fact that pay scale of Research Assistant is applicable to Laboratory Assistant only after 17.12.2011 and not prior to that. Therefore, Pay Verification Unit has rightly taken objection for fixation of pay for Laboratory Assistant and rightly concluded that excess amount paid to the Respondent No.1 and further rightly issued recovery proceeding against Respondent No.1”.

5. The learned AGP submits that the Respondent No.1 is granted benefit i.e. pay-scale of promotional post wrongly and therefore, recovery proceedings had to be initiated. The Respondent No.1 was not discriminated in any manner, much less due to disability of the Respondent No.1. As the post of Research Assistant is isolated one, Respondent No.1 was not entitled for promotion. The learned AGP further submitted that the Commissioner had exceeded his jurisdiction in directing the Petitioner – State to promote Respondent No.1. Such powers could be exercised by a forum like Service Tribunal or a Court of law. Under the existing scheme of Rights of Persons with Disabilities Act, 2016 and in view of Section 20, the Commissioner is not conferred with the powers to issue direction in the nature of mandate to the State to appoint and promote an employee.

6. Learned counsel for Respondent No.1 submitted that the Respondent No.1 was discriminated by denying him promotion only on the ground of his disability. The Respondent No.1 has rightly approached the Commissioner and the Commissioner passed an order

which order, does not call for any interference. The Petitioners have failed to establish their case. Counsel submitted that Respondent No.1 stood retired in the month of March, 2018 from service. After putting in such a long service, the State has now resorted to recover the amount on the ground that the pay-scale of the promotional post was wrongly made applicable to Respondent No.1. From the documents placed on record, no case is made out by the Petitioners.

7. We have considered the provisions of Rights of Persons with Disabilities Act, 2016, particularly, provision under Section 20(3). Prima facie, we find that the Commissioner (Disability) could exercise powers in case the Government employee is discriminated on the ground of disability.

8. Respondent No.1 - Shri. Suhas Shreepad Atre joined service in the year 1983 as a Laboratory Assistant. He completed 12 years of service in the year 1995. Under the Scheme i.e. Assured Career Progress, he was entitled for the benefit of pay-scale after completion of 12 years of

service which he got from the year 1996 onwards. After putting further 12 years of service, Respondent No.1 was entitled for further benefit which according to the counsel, was denied to him. We find sufficient force in the submission made by the learned counsel appearing for Respondent No.1 that no case is made out by the Petitioners for recovery of the amount disbursed to Respondent No.1 as the pay-scale granted to him is of promotional post of Research Assistant.

9. We find that the Respondent No.1 has retired from service in the month of March, 2018 and thus, he had put in a long service from the year 1983 onwards. He suffers disability. Considering the provisions of the Right of Persons with Disabilities Act, 2016 and in the light of material placed on record and the benefit granted under ACP scheme, the direction issued by the Commissioner (Disability), order directing promotion to the Respondent No.1, need not be implemented.

10. In the facts, the Petitioners are not entitled to recover amount disbursed to Respondent No.1 towards

salary and other service benefits during his service period.
No interference is called for on that count.

11. The Petitioners to complete the pension papers if not completed earlier, and on receiving papers the petitioners shall forward the same for appropriate action within three months from the date of receipt, would grant retiral benefits to Respondent No.1.

12. Writ Petition is disposed of accordingly.

M.S.KARNIK, J.

CHIEF JUSTICE