IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6794 OF 2018

The State of Maharashtra and ors. … Petitioners.
V/s.
Smt. Manda V. Deshmukh … Respondent.

Mr. N.C. Walimbe, AGP for the Petitioner.
Mr. M.D. Lonkar I/b Ms Leena Patil for the Respondent.

CORAM : A.S. OKA AND M.S. SONAK, JJ.

DATE OF RESERVING THE JUDGMENT : 28th August 2018.
DATE OF PRONOUNCING THE JUDGMENT : 14th September 2018.

JUDGMENT: (Per M.S. SONAK, J.)

1] Heard learned counsel for the parties.

2] Rule. With the consent 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 06.04.2017 made by the Maharashtra Administrative Tribunal (MAT), Mumbai allowing O.A. No. 1010 of 2016 instituted by the respondent seeking for arrears of pay differences consequent upon grant of deemed dates for the promotion she was awarded from time to time.

4] Mr. Walimbe, learned AGP for the petitioner, submits that in terms of Rule 32 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 (said Rules), the respondent was not eligible for arrears of pay. Besides, he points out that even the principle of "*no work no pay*" would be attracted to the facts of the respondent's case. He submits that the MAT has misconstrued the decisions of the Apex Court in case of ***Ramesh Kumar vs. Union of India – AIR 2015 SC 2904, State of Kerala and others vs. E.K. Bhaskaran Pillai – (2007) 6 SCC 524*** and ***Union of India vs. K.V. Jankiraman – AIR 1991 (SC) 2010.*** He submits that the MAT ought to have followed the ruling of the Apex Court in ***Paluru Ramkrishnaiah and ors vs. Union of India and anr. - 1989 (2) SCC 541***, in which, the ruling of "*no work no pay*" was explained in some details. Mr. Walimbe submits that even the interest of 12% per annum awarded by the MAT is excessive and warrants interference.

5] Mr. Lonkar, learned counsel for the respondent, defends the impugned judgment and order by pointing out that the predicates of Rule 32 of the said Rules were not at all attracted to the case of the respondent and therefore, there was no reason to deny arrears. He points out that the principle of "*no work no pay*" will not apply to a case where an employee was very much willing to work on a post, but was illegally deprived of the opportunity to work upon such a post. He submits that there is absolutely no jurisdictional error in the view taken by the MAT and therefore, this petition may be dismissed.

6] The rival contentions now fall for our determination.

7] Rule 32 of the said Rules as quoted in paragraph 11 of the impugned judgment and order reads as under:

> "*32. How the date of promotion is determined.*
> *The promotion of a Government servant from a lower to a higher post, his duties remaining the same, takes effect from the date on which the vacancy occurs, unless it is otherwise ordered. But when the promotion involves the assumption of a new post with enlarged responsibilities, the higher pay is admissible only from the date on which the duties of the new post are taken".*

8] From the perusal of the affidavit-in-reply on behalf the petitioner- State before the MAT, it is seen that the petitioner-State had never made out any case that the promotion granted to the respondent involved assumption of a new post with enlarged responsibilities and therefore, the higher pay was admissible only from the date on which the duties of the new post were taken. In the absence of any such case being pleaded in the affidavit, there is no good ground to interfere with the view taken by the MAT in the impugned judgment and order.

9] That apart, in the present case, the petitioner – State has itself granted promotion to the respondent with deemed dates. This was obviously in recognition of the fact that the respondent was entitled to promotion with effect from the deemed dates so indicated by the petitioner – State itself. As has been held in the various decisions of the Apex Court referred to earlier situation with regard to mandatory benefits consequent upon retrospective promotion is to be considered upon case to case. There are several facets which have to be considered. Some times where promotion is initially withheld on account of pendency of departmental proceedings or criminal proceedings, arrears to the extent of only 50% may be granted looking to the nature of the delinquency involved and the nature of acquittal or exoneration. Some times when an employee is illegally superceeded and such employee succeeds in a challenge to such superstition, full arrears may be allowed, therefore, it is very difficult to set down any hard and fast rule and the principle of "*no work no pay*" cannot be accepted as a rule of thumb. There are situation where arrears can and have been granted. (***See paragraph 12 and 13 of Ramesh Kumar (supra)***).

10] In case of *K.V. Jankiraman (supra)* there is an observation that the normal rule of "*no work no pay*" would not apply to the cases where employee was willing to work, but he was kept away from the same by the authorities for the no fault of his. The decision in *Paluru Ramkrishnaiah (supra),* turns on its own facts and it cannot be said that the view taken therein is opposed to the view taken in *Ramesh Kumar (supra) and K.V. Jankiraman (supra).*

11] Since, in the peculiar facts of the present case, the petitioner – State has not made out any case to attract the provisions of Rule 32 of the said Rules. We see no good ground to upset the view taken by the MAT in the impugned judgment and order. In the facts and circumstances of the present case, it cannot be said that the view taken by the MAT suffers from any jurisdictional error or such illegality has to warrant interference in the exercise of extraordinary jurisdiction.

12] On the aspect of interest at the rate of 12% per annum, we may note that such interest was made payable only in the event the petitioner – State were not to comply with the directions for payment of arrears within three months from the date of impugned judgment and order. Nevertheless, we agree with the contention of Mr. Walimbe that interest at the rate of 12% per annum in the facts and circumstances of the present case is on the higher side and the appropriate rate, according to us would be interest at the rate of 6% per annum.

13] For all the aforesaid reasons, we dismiss the present petition. However, we grant the petitioner – State further time of three months from the date this order is uploaded on the website of this court, to pay the arrears to the respondent. Only if, the arrears are not cleared within three months from such date, the petitioner – State shall be liable to pay interest at the rate of 6% per annum from the date such arrears became payable till the date of actual payment.

14] Rule is disposed of in the aforesaid terms. There shall be no order as to costs.

(M. S. SONAK, J.) **(A.S.OKA, J.)**