

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

WRIT PETITION NO. 6575 OF 2017

The State of Maharashtra and anr. ...Petitioner
Versus
Mr. Ravindra R. Avtade ...Respondents

Mr. O.M. Kulkarni, AAGP for the Petitioner/ State.
Mr. Manoj A. Patil for the Respondent.

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

DATE : 4th APRIL 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 25th July 2016 made by the Maharashtra Administrative Tribunal (MAT), Mumbai in O.A. No. 267 of 2013 instituted by the respondent. By the impugned judgment and order dated 25th July 2016, the MAT has granted relief to the respondent (applicant before the MAT)

in the following terms.

“12. The Applicant is held entitled to the deemed date of promotion from the date S/s S.A.A. Karim and G.R. Sonawane were promoted in 1999-2000 which date the respondents shall ascertain and act on. The Applicant is also held entitled to the arrears of pay and the admissible allowances till his retirement. The Applicant's pension and other post retiral benefits shall also be reworked out and the accruing arrears paid to him. All the monetary benefits be paid to the Applicant within three months from today. In the event of default, the said amounts shall carry interest at Rs.12% p.a. from the dates, they became payable till the date of actual payment. The Respondents do comply. The compliance to commence forthwith and be completed within three months from today.”

4] Mr. Kulkarni, learned AAGP for the petitioners – State, makes reference to previous rounds of litigation between the parties and some what hesitatingly submits that O.A. No. 267 of 2013 instituted by the respondent was barred by limitation and therefore, the MAT has erred in granting the aforesaid relief to the respondent.

5] Mr. Kulkarni submits that the respondent had instituted O.A. No. 184 of 2006 seeking for substantially similar relief before the MAT and such O.A. was dismissed by the MAT by judgment and order dated 16th August 2006 by observing that it does not find any substance in any of the contentions advanced on behalf of the respondent

herein. Mr. Kulkarni submits that in such circumstances, the MAT in the subsequent round of litigation, ought not to have been granted any relief to the respondent.

6] Mr. Kulkarni submits that the respondent is not entitled to place reliance upon the DPC proceeding of 1988 and on such basis, claim for deemed date of promotion. Mr. Kulkarni submits that in the year 1993, there was a change in the recruitment rules and in terms of such changed recruitment rules, the respondent did not fulfill the physical criteria for promotion to the post of Sub-Inspector (State Excise). Mr. Kulkarni submits that inasmuch as this aspect has not been considered by the MAT, the impugned judgment and order warrants interference.

7] In the alternate and without prejudice, Mr. Kulkarni submits that since the respondent has not actually worked as Sub-Inspector, the MAT, was not at all justified in directing payment of backwages. Mr. Kulkarni submits that in such a situation, the principle of no work – no pay will apply and the respondent, at the highest, ought to have been granted notional benefits for the period between

1999-2000 and 31st August 2006 (date of retirement), so that the pensionary benefits could be re-determined in case of the respondent. On this ground, Mr. Kulkarni seeks for modification of the impugned judgment and order.

8] Mr. Patil, learned counsel for the respondent, defends the impugned judgment and order. He submits that the petitioners have treated the respondent, who is a member of the Nomadic Tribe (N.T.), with utmost unfairness. He submits that the petitioners have themselves admitted that the respondent was recommended for promotion in 1988. He submits that such promotion was actually not awarded to the respondent because some other candidate unsuccessfully challenged such promotion. He submits that despite the challenge failing, for no justifiable reason the petitioners deprived the respondent promotion to the post of Sub-Inspector. He submits that the respondent was literally made run from pillar to post as has been observed by the MAT in the impugned judgment and order. He submits that 1993 Rules do not apply to the case of the respondent, who was already ordered to be promoted in terms of recommendations of 1988 DPC. He points out that

the issue of limitation was expressly given out as recorded by the MAT in the impugned judgment and order. He points out that the MAT, by its order dated 16th August 2006 had granted express liberty to the respondent to represent his grievances to the petitioners and the petitioners were directed to dispose of such representation in accordance with law. Such representation was disposed of only in the year 2012 and therefore, O.A. No. 267 of 2013 instituted by the respondent was well within the period of limitation. For all these reasons, Mr. Patil submits that this petition may be dismissed with exemplary costs.

9] Without prejudice to the aforesaid, Mr. Patil, on the basis of instructions from the respondent Mr. Ravindra R. Avtade, who is present in the court, made a statement that in case this petition is dismissed, then, the respondent will waive the actual backwages from 1999 to 2006. In effect therefore, Mr. Patil submitted that the respondent will have no objection if the alternate submission of Mr. Kulkarni is accepted and the impugned judgment and order modified accordingly. He, however, requested that some time bound directions be issued in the matter of redetermination of

pensionary benefits and the payment of the same.

10] The rival contentions now fall for our determination.

11] There is substance in the contention of Mr. Patil that the respondent, in the present case, has been unfairly treated by the petitioners. The respondent belongs to N.T. Category and has been educated up to 2nd year B.A. The respondent from the year 1988 onwards has been clamoring for promotion to the post of Sub-Inspector (State Excise). Despite the DPC, in the year 1988, recommending the respondent for such promotion and despite the fact that such recommendation was duly accepted by the petitioners, the promotional post, has eluded the respondent, mostly on account of bureaucratic hassles created by the petitioners.

12] There is no merit in the contentions based upon the bar of limitation or on the basis of judgment and order dated 16th August 2006 in O.A. No. 184 of 2006 instituted by the respondent. From the perusal of the impugned judgment and order, it is quite clear that the issue of

limitation was specifically waived by the petitioners. In any case, even assuming that such an issue cannot be waived, we find that O.A. No. 267 of 2013 was instituted by the respondent to challenge the communication dated 10th October 2012, by which, the respondent's representation came to be finally rejected by the petitioners. From the date of such communication, there is absolutely no reason to hold that O.A. No. 267 of 2013 instituted by the respondent was barred by limitation.

13] The MAT, in its judgment and order dated 16th August 2006 had granted the respondent liberty to submit detailed and comprehensive representation to the competent authority in the matter of his grievance regards promotion to the post of Sub-Inspector (State Excise). Further, the directions were issued to the petitioners to consider the case of the respondent, if he is otherwise eligible and fit for promotion then to pass appropriate orders. The MAT had in fact directed the petitioner authority to dispose of the representation within three months from the date of receipt of the same. It is with these observations that the O.A. No. 184 of 2006 was

disposed of as not pressed. In these circumstances, the petitioners cannot now contend that the respondent was not entitled to institute O.A. No. 267 of 2013 to question the communication dated 10th October 2012, by which, the competent authority, disposed of the respondent's representation, which was, in fact required to be disposed of expeditiously within three months from the date of receipt.

14] There is also no merit in the contention as regards any alleged ineligibility of the respondent on the basis of 1993 Rules. It is settled position in law that the recruitment rules in force on the date when the vacancy arose are the relevant recruitment rules. Besides, in the present case, the DPC had already recommended the promotion of the respondent in the year 1988 itself and such recommendation had even been accepted by the petitioners. The respondent was not actually promoted to the post of Sub-Inspector in pursuance of recommendations of 1988 because, such recommendations were challenged by some other candidates. There is no dispute that such challenge

ultimately failed. There is also no dispute that S.A.A. Karim and G.R. Sonawane, who were also recommended for promotion by the DPC in the year 1988 along with the respondent were actually promoted to the post of Sub-Inspector in the year 1999-2000. There is absolutely no justification placed on record by the petitioners as to why the respondent was also not similarly promoted in the year 1999-2000. In such circumstances, we cannot fault the MAT for making the impugned judgment and order.

15] There is no necessity to adjudicate on the alternate contention based upon principle of no work – no pay raised by Mr. Kulkarni, in view of gracious concession made by the respondent that he will not insist upon the payment of backwages for the period between 1999-2000 and 31st August 2006, which is the date, on which, the respondent retired upon attaining the age of superannuation. Accordingly, some modification is due to the final directions issued by the MAT in the impugned judgment and order.

16] Accordingly, in substitution of the directions issued by the MAT in paragraph 12 of the impugned judgment and

order, we direct the petitioners to notionally promote the respondent to the post of Sub-Inspector (State Excise) with effect from the date on which S.A.A. Karim and G.R. Sonawane came to be promoted as Sub-Inspector (State Excise), thereby, awarding the respondent a deemed date of promotion. We further direct that though the respondent will not be entitled to arrears/backwages for the period between such deemed date and the date of his superannuation, i.e., 31st August 2006, the petitioners shall re-work and compute on notional basis the last pay, which the respondent would have drawn on the date of his retirement, i.e., 31st August 2006, had he been actually promoted to the post of Sub-Inspector and drawn the salary and allowances of such promotional post with effect from the deemed date and on such reworking and recomputation to determine the respondent's pension and other retiral benefits. Further, the petitioners are directed to complete this exercise within three months and also to pay to the respondent arrears (retiral benefits) with effect from 31st August 2006, upon such basis. In case of default, then, without prejudice to the respondent's right to initiate action for contempt of court, the petitioners, shall be liable

to pay interests on the amount of retiral benefits (differential amount) at the rate of 10% per annum. Taking into consideration the gracious approach of the respondent, despite the fact that the petitioners have treated the respondent quite unfairly, we sincerely expect that the dues now payable to the respondent, will be actually paid to the respondent within three months from today and the petitioners, will also pay to the respondent pension and other retiral benefits at the revised rates, commencing from the next month itself. The time limit of three months is basically for payment of arrears of retiral benefits (differential amounts).

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

18] All concerned to act on the basis of authenticated copy of this order.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)