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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.8212 OF 2017

The State of Maharashtra and Anr.	... Petitioners
Vs.	
Shri. Sukhdeo Sadashio Naik	... Respondent

Mr. N.C. Walimbe, AGP for the Petitioners.
Ms. Nazia S.A. Shaikh i/b. Ms. Leena Patil for the Respondent.

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

DATE : 1st OCTOBER 2018.

P.C. :

1 Heard the learned AGP for the petitioners. By this petition under Article 226 of the Constitution of India, the State Government and the other petitioner have impugned the order dated 11th January 2017 passed by the Maharashtra Administrative Tribunal (for short “the said Tribunal”) on the original application filed by the respondent who was a retired Assistant Commissioner of Police.

2 We have gone through the impugned order with the assistance of the learned AGP. In paragraph 6, the Tribunal referred to the order dated 2nd July 2015 passed in the earlier original application filed by the respondent. By the said judgment and order, the Tribunal directed the petitioners to consider the case of the respondent for promotion to the post of Superintendent of Police (Wireless) (Traffic) with effect from 1st March 2012. By the order dated 25th April 2016, the first petitioner rejected the case of the respondent. Being aggrieved by the said order, the respondent filed original application on which the impugned order has been passed. Paragraphs 7 and 8 of the impugned order read thus :-

“7. From this it quite clear that the proposal to promote the Applicant on the solitary post of Superintendent of Police (Wireless) (Traffic) was under consideration of the Respondent No.1 at least from 18.10.2011. The reasons for delay in taking a final decision are flimsy to say the least. When no reservation is provided for a solitary post and when promotion to a post carrying grade pay of Rs.7600/- requires reference to the Establishment Board no.2, why separate references were required to be made to G.A.D. is not clear. In fact, if the Respondent no.1 has submitted a clear proposal to Establishment Board no.2, just about the time when then incumbent Shri D' Souza was about to retire, the Applicant could have been considered for promotion. The dilly-dallying on the part of Respondent no.1 as admitted in the affidavit in reply dated 25.10.2016, is the only reason as to why the Applicant could not be promoted as Superintendent of Police, (Wireless) (Traffic). As a result, the Applicant is rightly aggrieved that his case for promotion was not considered by the Respondent no.1 in the right earnest.

8 Considering the peculiar facts and circumstances of the case, the Respondent no.1 is directed to place the case of the Applicant before the Establishment Board no.2 (or any other D.P.C, as has been advised by G.A.D on 20.1.2014) to grant deemed date of promotion to the Applicant w.e.f 1.3.2012 to the post of Superintendent of Police, Wireless, (Traffic). If found fit by the Establishment Board (D.P.C) orders granting deemed date of promotion to the Applicant are required to be issued. This process should be completed within 3 months from the date of this order. This Original Application is allowed in these terms with no order as to costs.”

3 The learned Member of the Tribunal has not directed the present petitioners to grant promotion to the petitioner in the original application.

4 The submission is that the case made out by the petitioner was not even considered by the Tribunal. All that the Tribunal has done by the impugned order is that either the Establishment Board or D.P.C have been directed to consider the case of the respondent for grant of a deemed date of promotion. It is specifically observed that if found fit by the Establishment Board or D.P.C, orders granting deemed date of promotion to the respondent are required to be issued.

5 There is no writ of mandamus issued by the Tribunal to the petitioners to positively grant deemed date of promotion to the respondent as prayed by him. Only the Establishment Board or D.P.C is directed to consider the case of the petitioner.

6 This is not a fit case where interference can be made in writ jurisdiction under Article 226 of the Constitution of India considering the nature of directions issued under the impugned order.

7 Accordingly, writ petition is rejected. Time to comply with the impugned order is extended by a period of three months from the date on which this order is uploaded. We make it clear that no further extension will be granted.

(M.S. SONAK, J.)

(A.S.OKA, J.)