

(Reportable)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1208 OF 2003

The Chief Executive Officer,
Zilla Parishad, Ahmednagar,
District Ahmednagar.

...PETITIONER

-VERSUS-

Babarao Pundalik Shamkunwar,
Age : 56 years, Occupation : Service,
Resident of Nimbral, Taluka Akole,
District Ahmednagar.

...RESPONDENT

...

Advocate for the Petitioner : Shri S.T.Shelke
Advocate for the Respondent : Shri R.D.Bhalerao

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 13th June, 2019

Oral Judgment :

1 This writ petition was admitted by the order dated 05.01.2004 and the impugned judgment of the Industrial Court dated 16.08.2002, delivered in Complaint (ULP) No.142/1988, was stayed.

2 The respondent/ original complainant had preferred Civil Application No.901/2004, which was heard by this Court and the following order was passed on 13.02.2004 :-

"Heard Shri R.D.Bhalerao, learned Adv. for the applicant. Purshish is taken on record. Para No.7 of the Civil Application stands deleted.

- 2. This Civil Application is filed for vacating ex-parte interim order granted in favour of the original petitioner. In fact, this is not an ex-parte order. The respondent was served, but none remained present for the respondent.*
- 3. The question involved in the petition is whether, the promotion given to the original respondent to the post of Health Assistant, as a temporary measure, and if he is reverted to his substantive post, whether, it amounts to reversion or punishment in the eye of law. The Industrial Court passed an order to continue the respondent on the post of Health Assistant and fix his pay and allowances accordingly. Undisputedly, the respondent prior to his temporary promotion, was working as Vaccinator with Zilla Parishad, Ahmednagar.*
- 4. Considering the point involved in the petition and order passed by the Industrial Court, in my judgment, the petition was required to be heard finally. Hence Rule nisi was issued and stay to the implementation and operation of the judgment and order dated 16.08.2002 is granted.*
- 5. Having heard Shri Bhalerao, the learned Advocate for the applicant and Shri S.T.Shelke, for respondent, I am of the view that no case is made out for vacating interim relief. Civil Application stands rejected."*

3 I have considered the submissions of the learned advocates for the respective sides and have gone through the record available.

4 The respondent was admittedly granted temporary promotion as a Health Assistant/ Vaccinator on 03.03.1987. Considering that the selection board was not convened and taking into account the work available, the petitioner exercised it's powers under Rule 2(1) of the Maharashtra Zilla Parishads and Panchayat Samitis (Removal of

Difficulties) Order, 1983. The said order dated 03.03.1987 specifically mentions that it was a temporary promotion accompanied with a particular scale that was temporarily extended and with a further condition that the said promotion would be subject to the decision of the selection board. It was also mentioned that the promotion would last for a maximum period of one year or till the selection board grants its approval to such promotion, whichever is earlier.

5 I have perused Rule 2(1) of the 1983 order, which does not speak of granting temporary promotions. It provides for promotion to the posts mentioned in the appendices. However, admittedly the respondent was granted temporary promotion and it is also not his case before the Industrial Court that he was granted a regular promotion. He has approached the Industrial Court with the case that he was temporarily promoted.

6 The grievance of the respondent is twofold. Firstly, he was sent back to his regular post after occupying the promotional post temporarily for 11 months and 20 days, no show cause notice was issued to him, the order dated 23.02.1988 sending him back to his regular permanent post was not preceded by the charge sheet or enquiry and no opportunity of hearing was given. Secondly, the two persons, namely, Mr.Kamble and Mr.Chaudhari, who were also given similar temporary promotions, were granted intermittent breaks and were again granted

temporary promotions. Such juniors were continued on promotional posts temporarily by giving intermittent breaks, which would not justify the disengagement of the respondent from the promotional post.

7 In my view, it requires no debate that the order granting temporary promotion subject to certain conditions can never be presumed to be the regular order of promotion. There is no dispute that the rules and policy of promotion implemented by the petitioner mandates the selection of an in-service candidate for being promoted and the selection board, upon granting promotions to such in-service candidate, would render him eligible to occupy the promotional post permanently. The respondent was aware that the maximum period for which his temporary promotion would last, was one year from 03.03.1987 and he was disengaged from such temporary promotion after 11 months and 20 days, on 23.02.1988. In another 10 days, his temporary continuance on the promotional post would have automatically come to an end by efflux of time.

8 The respondent has been unable to cite any provision applicable to him or any provision from the service conditions that are applicable to such employees so as to indicate that such temporary promotion would be deemed to be regular promotion, inasmuch as, such an employee would not be sent back to his regular permanent post without issuing him a show cause notice or without hearing him. The

respondent has also not cited any such judicial pronouncement, which would indicate that such temporary promotions, which are stop gap arrangement, would amount to regular promotions or that such persons are entitled to right of hearing before such temporary promotion is withdrawn.

9 The Honourable Supreme Court (three Judges Bench) has dealt with a somewhat similar case in the matter of *Secretary-cum-Chief Engineer, Chandigarh vs. Hari Om Sharma and others, (1998) 5 SCC 87* and has concluded that if the promotion continued for a long time from 1990 onwards till the Court decided the matter, such promotion was not to be considered as a stop-gap arrangement. In the instant case, the respondent was specifically informed that his temporary promotion would be for a maximum period of one year and he was returned to his original post after 11 months and 20 days.

10 In a group of matters dealt with by the Honourable Supreme Court (three Judges Bench) in the matter of *C.K.Antony vs. B.Muraleedharan and others, (1998) 6 SCC 630*, the Honourable Supreme Court has categorically concluded that a person, who has been appointed to a service or post temporarily or provisionally as a stop-gap arrangement, can never be considered as one, who has been appointed to that post or service. It was also concluded that the appellants were temporarily appointed as a stop-gap arrangement. Their promotion as

Senior Grade Rangers from 01.07.1978 clearly indicated that their appointment as Assistant Conservators as on 01.05.1978, was only an officiating arrangement and they were not members of the Kerala Forest Service.

11 The Industrial Court has concluded that the respondent should have been granted an opportunity of hearing and a departmental enquiry should have been conducted before sending him back to his regular permanent post. I find that the Industrial Court has fallen in a patent error of law in concluding that a temporary promotion with specific conditions and with a particular period to last, could be termed as being a regular promotion order requiring an opportunity of hearing before being sent back. I do not find that the Industrial Court was right in concluding that taking away of a temporary promotional assignment would amount to reversion.

12 In view of the above, this Writ Petition is allowed. The impugned judgment and order dated 16.08.2002 stands quashed and set aside and Complaint (ULP) No.142/1988 stands dismissed.

13 Rule is made absolute in the above terms.