

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

WRIT PETITION NO. 10012 OF 2014

Chandravadan Laxmichand Gujrathi,
age 60 year, occ. Retired,
R/o Opp. Agarkar Hospital, 2nd Floor,
Varche Gaon, Taluka Shirpur,
District Dhule

...Petitioner

VERSUS

1] The State of Maharashtra,
Through its Secretary,
Rural Development Department,
Conservation Department,
Mantralaya, Mumbai,

2] The Chief Executive Officer,
Zilla Parishad, Dhule

...Respondents

...

Mr. A.S.Sawant, advocate for Petitioner

Mr. A.V.Deshmukh, AGP for respondent no.1

Mrs. V.D.Jadhav, Advocate for respondent no.2

...

CORAM : T.V.NALAWADE

AND

SUNIL K.KOTWAL, JJ.

DATE OF RESERVING

THE JUDGMENT : 23.1.2019

DATE OF PRONOUNCEMENT

OF THE JUDGMENT : 31.1.2019

JUDGMENT (Per Sunil K.Kotwal, J.)

Rule. Rule made returnable forthwith.

With the consent of the learned counsel for the

parties the petition is taken up for final hearing.

2. In this Petition, only question for consideration before us is whether the time bound promotional scale can be extended in favour of the petitioner from the date of appointment of petitioner on 3.1.1983 or from the date of absorption in the cadre of Civil Engineer Assistant on 1.4.1988.

3. Undisputedly, the petitioner was appointed on the establishment of respondent no.2 Zilla Parishad on the post of Mistri Grade II in the year 1973. As he was not regularized on the post of Mistri Grade II like other employees in the same cadre, he filed Complaint (ULP) No. 656 of 1999 before the Industrial Court, which was allowed on 8.3.2002 and the respondent Zilla Parishad was directed to give benefit of Mistri Grade II cadre to the petitioner with effect from 3.1.1983. Other benefits of permanent employee

and also the arrears of pay were also awarded by the Industrial Court, Jalgaon. Against that order, no appeal was preferred by the Zilla Parishad and it has reached finality.

4. Heard Mr. Amol Sawant, learned counsel for the petitioner and Smt. V.D.Jadhav, learned counsel for respondent no.2 and Mr. A.V.Deshmukh, learned A.G.P. for respondent no.1.

5. Learned counsel for the petitioner submits that the petitioner was regularized in the cadre of Mistri Grade II with effect from 3.1.1983. The benefit of higher promotional scale was extended by respondent no.2 in favour of the petitioner with effect from 1.4.1988 i.e. from the date of absorption of the petitioner in the cadre of Civil Engineer Assistant. He has drawn our attention towards the entry in the service book of the petitioner, wherein his date of appointment is shown as 3.1.1983. He has also drawn our attention towards the Government Resolution, dated 8.6.1995,

under which benefit of promotional scale was extended to the Zilla Parishad employees and letter, dated 22.6.2007, issued by the Additional Secretary, Maharashtra State, directing the Chief Officers of Zilla Parishads to extend the benefit of time bound promotional scale to the Mistri Grade I, Road Clerks, Muster Clerks and the letter, dated 4.8.2007 directing to extend such benefit even to the employee in the cadre of Mistri Grade II from the date of their appointment on that post. He submits that as the appointment of the petitioner on the post of Mistri Grade II was regularized by the order of Industrial Court since 3.1.1983, while extending the benefit of time bound promotional scale in favour of the petitioner, the period of 12 years shall be counted from 3.1.1983 and not from 1.4.1988, as considered by respondent no.2 while passing the order dated 14.1.2008 (Exh. 'E').

6. Learned counsel for respondent no.2 submits that under subsequent Circular, dated

28.7.2014 the Additional Secretary, Rural Development Department of the State has clarified that the time bound promotional scale shall be extended to the employees in the cadre of Civil Engineer Assistant from the date of their absorption in the same cadre, and therefore, for granting time bound promotional scale to the petitioner, the period of 12 years was counted from 1.4.1988 when the petitioner was absorbed in the cadre of Civil Engineer Assistant. She has drawn our attention towards delay in filing this petition.

7. After going through the judgment passed by the Industrial Court in Complaint (ULP) No. 656 of 1999 (Old No. 588 of 1992), it emerges that the Industrial Court regularized the appointment of the petitioner as Mistri Grade II with effect from 3.1.1983 with other attendant benefits of permanent employee and arrears of pay. The Industrial Court found that other similarly situated employees were already regularized by

respondent no.2 in the cadre of Mistri Grade II, though criminal cases were pending against them. Even it is not disputed that the order, dated 8.3.2002 passed by the Industrial Court in Complaint (ULP) NO. 656 of 1999 has reached finality, as it was not challenged by respondent no.2 Zilla Parishad.

8. After going through the Government Resolution, dated 20.5.1999, it emerges that the employees of the Zilla Parishad used to work on different posts as Junior Engineer Assistant, Mistri Grade I, Mistri Grade II, Road Clerks, Muster Clerks, Time Keeper. Those posts were amalgamated in one cadre i.e. Civil Engineer Assistant. The absorption of employees on different post, in the cadre of Civil Engineer Assistant was to be made phasewise, depending on availability of the posts of Civil Engineer Assistant.

9. Subsequently, by writing letter, dated

22.6.2007 (Exh. 'D'), the Additional Secretary has made it clear that while extending benefit of time bound promotional scale to Junior Engineer Assistant, Mistri Grade I, Road Clerks, Muster Clerks, Time Keeper, who are absorbed in the cadre of Civil Engineer Assistant, their first date of appointment shall be considered and not the date of their absorption as Civil Engineer Assistant.

10. By subsequent letter, dated 4.8.2007, these guidelines were also made applicable to the Mistri Grade II i.e. grade of the petitioner.

11. Thus, obviously, while extending the benefit of time bound promotional scale to the petitioner, his initial date of appointment in the cadre of Mistri Grade II on 3.1.1983 is to be considered while calculating the subsequent period of 12 years for extending the benefit of time bound promotional scale. It cannot be ignored that amalgamation of these employees on various post, in one cadre of Civil Engineer Assistant,

was not the process of promotion but the amalgamation was done only for the convenience of the department. Therefore, the subsequent clarification given by the Deputy Secretary, Maharashtra State under Circular, dated 28.7.2014 is neither in accordance with the promotional scale benefit extending Government Resolution nor in consonance with the directions given by the Additional Secretary, Maharashtra State, by his letter, dated 22.6.2007. Therefore, obviously the Circular, dated 28.7.2014 issued by the Deputy Secretary, Maharashtra State needs to be ignored while considering the date of extending benefit of time bound promotional scale to the employees of the Zilla Parishad.

12. In the circumstances, while extending the promotional scale to the petitioner, respondent no.2 is bound to consider the initial date of appointment of petitioner in the cadre of Mistri Grade II i.e. 3.1.1983. The order, dated 14.1.2008 (Exh. 'E') passed by the Additional

Chief Executive Officer, Zilla Parishad, Dhule, extending the time bound promotional scale to the petitioner by considering the date of absorption in Civil Engineer Assistant from 1.4.1988 is incorrect. In the circumstances, direction needs to be given to respondent no.2 to reconsider grant of time bound promotional scale to the petitioner by taking into consideration initial date of appointment of the petitioner i.e. 3.1.1983. Such meritorious petition cannot be rejected only on the ground of delay and latches.

13. Accordingly, Writ Petition No. 10012 of 2014 is allowed. Respondent no.2 is directed to extend the time bound promotional scale to the petitioner by considering the initial date of appointment of the petitioner i.e. 3.1.1983 while calculating the service period of 12 years and shall grant time bound promotional scale from 4.1.1995. Pay fixation of the petitioner be made and arrears of pay shall be paid to the petitioner accordingly. This judgment shall not be treated

as precedent as passed in peculiar circumstances
of this case. Rule is made absolute in the above
terms.

[SUNIL K.KOTWAL, J.]

[T.V.NALAWADE, J.]

dbm