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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1475 OF 2010

Maharashtra Jeevan Pradhikaran & anr. ..Petitioners
vs.
Rajeshwar S. Rane ..Respondent

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Ms. Payal Jain I/b. Ms. Neeta Karnik for petitioners.
Ms. Tanaya Patankar a/w. Akanksha Kalyanpur I/b. Shri
Prabhakar Jadhav for respondent.

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CORAM : M.S.KARNIK, J.
DATE : 11th APRIL, 2019

ORAL JUDGMENT :

Leave to amend so as to delete respondent No.2
from the array of respondents. Amendment to be carried out
forthwith.

2. By this Petition filed under Article 226 and 227 of
the Constitution of India, the petitioners are challenging the
order dated 12/10/2009 passed by the Industrial Court, Thane,
thereby allowing the complaint of Unfair Labour Practices filed
by the respondent. The Industrial Court set aside the order
dated 20/6/2000 issued by the petitioners regarding
cancellation of respondent's promotion as a Senior Clerk and

withholding the benefit of Assured Career Progression ('ACP' for short) granted earlier.

3. The facts of the case in brief are, the respondent was appointed as a Junior Clerk with effect from 16/2/1981. Thereafter, on completion of 12 years of his employment, sometime in the year 1996 he was given benefit of ACP.

4. By an order dated 15th March, 2000 the respondent was promoted as a Senior Clerk and was posted at Chiplun, District – Ratnagiri. The respondent was then working as Junior Clerk at Thane. By an order dated 28th March, 2000, the respondent was informed that he should join at Chiplun, District – Ratnagiri on or before 28/3/2000.

5. The respondent made a representation to the Competent Authority on 3rd April, 2000. He requested that he may be granted four months extension to join promotional post of Senior Clerk as his two sons are taking education at

Dombivali and their annual examinations are on going. He also pointed out that he is Diabetic and suffering from High Blood Pressure. For all these reasons he requested sympathetic consideration of his representation for extension of time to join.

6. By an order dated 20/6/2000, which is at page 21 of the paper-book, the petitioners cancelled the promotion of the respondent as the respondent was not interested in joining the promotional post at the transferred place of posting. It was further mentioned that the respondent would not be entitled for the benefit of ACP and the same is withdrawn.

7. Thereafter, the complaint of Unfair Labour Practice was filed before the Industrial Court in the year 2006. The Industrial Court allowed the complaint and set aside the order dated 20/6/2000.

8. Assailing the order of the Industrial Court, learned Counsel for petitioners Ms. Payal Jain would submit that grant of ACP benefits is governed by the terms of GR dated 8th June,

1995. She would point out the relevant clause of the GR which provides that if the concerned employee refuses regular promotion then the benefits of ACP earlier granted will be taken away. In her submission, the respondent was promoted to the post of Senior Clerk on 15th March, 2000. The respondent did not join citing personal difficulties and sought extension. The petitioner therefore had no alternative but to cancel the promotion and withdraw the benefits of ACP already granted.

9. Learned Counsel for the petitioners would submit that this action is in terms with the GR. She would submit that the Industrial Court has proceeded on a completely erroneous footing that as the representation made by respondent was never decided and the entire proceedings nowhere reflect the respondent refused promotion, the respondent's case deserved to be accepted. According to her, the Industrial Court's reasoning that the respondent repeatedly prayed for time to join the promotional post and hence it cannot be said that respondent refused promotion is unsustainable. The Industrial

Court further observed that nothing is there on record to indicate that the petitioners have informed to respondent about his representation whether the same is accepted or not. This according to her ought not to have been the basis for allowing the respondent's claim.

10. She would submit that once the order of promotion is issued, it is expected that respondent joins the promotional post immediately or at least within a reasonable time or within such extended time as may be specified by the petitioners. The petitioners cannot be expected to wait endlessly only because respondent is seeking extension. They had no alternative but to cancel the promotion. She would moreover submit that the case of the respondent would be governed by GR dated 8th June, 1995 which clearly provides that if the employee refuses promotion then benefits of ACP which are already granted are to be withdrawn.

11. Learned Counsel for respondent Ms. Tanaya Patankar invited my attention to the correspondence on record.

She submitted that it is not as if the respondent was not interested in joining the promotional post of Senior Clerk. According to her, due to some personal difficulties and health issues, the respondent had requested for extension of time to join the new posting. She invited my attention to the communication dated 4th September, 2000 to submit that even as on 4th September, 2000 the respondent was ready to accept the promotion. A grievance is made that without any notice the promotion is cancelled and the benefits of ACP scheme are withdrawn. It is the case of the respondent that he was never informed as to what has happened to his request for extension. His extension was never rejected. In fact, he pointed out that there is a post of Senior Clerk vacant at Thane and Panvel where he could be appointed on promotion. A grievance is made by him that instead of considering his request, some other officials are appointed on the posts of Senior Clerks lying vacant at Thane and Panvel.

12. Learned Counsel for respondent would then submit that time and again he requested for extension to join. Learned Counsel then relied upon a communication dated 4/2/2005 of the petitioners which refers to a decision dated 12th January, 2005 for restoring the benefit taken away by the communication dated 20th June, 2000. As there was some ambiguity in the decision, opinion was sought from the Higher Authorities. Learned Counsel then would invite my attention to the communication dated 2nd May, 2006. In the said communication, it is stated that the promotion of the respondent was cancelled after three months and therefore this period of three months be regarded as a final extension. Learned Counsel would submit that this is a new stand taken by the petitioners.

13. She would further invite my attention to the order passed by the Industrial Court. In her submission, the Industrial Court was justified in arrived at a conclusion that no decision was taken by petitioners in respect of the application for extending the time to join the promotional post made by the respondent. She would submit that the respondent never

refused to join the promotional post. He only requested extension of time to join. She would submit that the petitioners ought to have considered the genuine difficulties placed on record and first arrived at the decision whether to grant extension or not. The petitioner straight away by the order dated 20th June, 2000 cancelled the promotion and withdrawn benefits of ACP. In her submission, no opportunity of hearing was given to respondent before passing of the impugned order. She would submit that as the respondent is adversely affected by the said order, the petitioners could not have proceeded to pass the order in breach of the principles of natural justice. Learned Counsel submitted the Industrial Court after taking into consideration all these factors and that even the officers of the petitioners had recommended the case of the respondent for extension, that the Industrial Court came to the conclusion that the impugned order cancelling promotion is erroneous.

14. I have heard learned Counsel for the parties and considered the record. The respondent was granted the benefit of ACP after completion of 12 years of service in the year 1996.

Thereafter, by an order dated 15th March, 2000, he was promoted as a Senior Clerk. By an order dated 28th March, 2000, the respondent was directed to join as a Senior Clerk on promotion at Chiplun on or before 28th March, 2000. The respondent made a representation on 3rd April, 2000 pointing out that he is suffering from Diabetes and High Blood Pressure and on account of ill health as well as family difficulties prayed for extension of four months to join.

15. By an order dated 20th June, 2000, the promotion of the respondent was cancelled and the benefits of ACP Scheme was withdrawn. This was the order impugned by the respondent before the Industrial Court.

16. At this juncture, I may refer to the GR dated 8th June, 1995 pertaining to the ACP Scheme. The GR in categorical terms provides that in case an employee refuses regular promotion then not only is he not entitled to the benefit of promotion but even the benefits already granted of ACP Scheme would stand withdrawn.

17. The object of the ACP Scheme is clear. The same is with a view to remove stagnation amongst employees who do not have any promotional avenues open. They get the benefit of placement in the scale of pay of the promotional post after completing requisite numbers of years of service. This right is not absolute but is governed by the conditions stipulated by the GR providing for this benefit. The GR in clear terms provides that an employee who avails of the benefits of ACP Scheme, later on refuses promotion on the regular post, cannot make a grievance that the benefits already granted under ACP Scheme should continue despite refusal on its part to accept the promotion. The consequence provided by the GR cannot be said to be arbitrary or illegal.

18. From the record I find that after the order cancelling the promotion and withdrawing the benefits of ACP was issued, even thereafter the respondent requested the petitioner that though he is willing to join promotional post but he may be accommodated in the post of Senior Clerk somewhere close to

Thane. He made a grievance that some senior clerks are accommodated at Thane and Panvel. I find that even after the promotion was cancelled, the respondent did not show any inclination to join as Senior Clerk at Chiplun. It is thus clear that the respondent was keen on joining as a Senior Clerk only at a place of his choice and convenience.

19. It may be that thereafter the respondent made representations seeking extension of time to join the promotional post. Sometime in the year 2005 even the officers of the petitioners considered the representation and made a recommendation for cancelling the order dated 20th June, 2000. However, the final decision taken in this regard was that whatever time was taken to pass the order dated 20th June, 2000 itself should be considered as an extension. This in view of the grievance of the respondent that his application for extension was not decided.

20. In any case, in my opinion, if by order dated 5th March, 2000 the respondent has been regularly promoted as a

Senior Clerk, then it was expected that he should have joined within reasonable time or within such extended time as may be permitted by the petitioners. The petitioners cannot be expected to wait endlessly for the respondent to join the promotional post. The order dated 20th June, 2000 cancelling the promotion and withdrawing the benefit of ACP was passed almost after three months of issuance of order of promotion. The said order cannot be said to be illegal only because there is no decision taken by the petitioners on the representation made by the respondent for extension of time. In fact GR dated 8th June, 1995 clearly provides that when an employee refuses regular promotion, the benefit of ACP earlier granted of the said post are liable to be withdrawn. The grant of benefit of ACP is undoubtedly with a view to remove stagnation as there are very few or no promotional avenues open at times. However, this benefit which is conferred is always subject to the terms and conditions which are set out in the GR.

21. In my opinion, the Industrial Court has erred in proceeding on the footing that as nothing is placed on record to show that the respondent has refused to accept the promotion, his claim to the post would survive. The record clearly indicates that time and again the respondent was seeking extension of time to join the promotional post. Even after the order dated 20th June, 2000 was passed, the respondent made a representation that though he is willing to join the promotional post, he should be accommodated as a Senior Clerk only in Thane or Panvel. I find that though the respondent was promoted on 15th March, 2000, he only kept on making applications for extension of time. The respondent did not join the duties. Merely because there was no response to the request made by the respondent for extension, it cannot be assumed that the matter was therefore under consideration and that this amounts to extension. In terms of the GR dated 8th June, 1995 the petitioners were well within their rights to cancel the promotion and withdraw the benefits of ACP already granted if respondent refused to join the post. In respect of promotion

order dated 15/3/2000, on one hand the respondent kept on making applications for extension of time to join the post at Chiaplun, but on the other hand showed his willingness to join provided he is accommodated at Thane or Vashi. The respondent was willing to join but on his terms. He continued to work at Thane and even the complaint to the Industrial Court was made only in 2006. This clearly demonstrates that respondent wanted an accommodation only at a place near his present place of posting at Thane. The respondent would have been well advised to join at Chiaplun on the promotional post and then make a representation. In these facts, it is not open for the respondent to contend that there had to be a specific order rejecting the request for extension of time. The promotion order is cancelled on 20/6/2000. If in these circumstances, the respondent has taken a stand that this was the final extension, in my opinion, the said stand cannot be said to be unreasonable. Not having joined the promotional post for more than 3 months would obviously invite the consequence of cancelling the promotion. Merely because the petitioners were sympathetically

considering the request of the respondent for withdrawing the order dated 20/6/2000 even in 2005, this by itself will not enure to the benefit of respondent to contend that this amounts to extension. In these circumstances, the order passed by the Industrial Court calls for interference.

22. The Petition therefore succeeds.

23. The Impugned order passed by the Industrial Court is quashed and set aside. Consequently the complaint before the Industrial Court stands dismissed.

24. Rule is made absolute with no order as to costs.

(M.S.KARNIK, J.)