

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.87 OF 2021
WITH
INTERIM APPLICATION (L) NO.19854 OF 2021

Jagdish Sakharam Parbalkar ..Petitioner/Applicant
Versus
State of Maharashtra and Ors. ..Respondents

Mr. Gautam S. Dongre, Advocate for the Petitioner/Applicant.
Mr. Abhay Patki, Addl. GP for Respondent Nos.1, 2 & 5.
Mr. Rahul Nerlekar, Advocate for Respondent Nos.3 & 4.

CORAM : UJJAL BHUYAN &
MADHAV J. JAMDAR, JJ.
DATE : 20th SEPTEMBER, 2021

P.C.

Heard Mr. Gautam Dongre, learned counsel for the petitioner:
Mr. Abhay Patki, learned Addl. GP for respondent Nos.1, 2 and 5: and Mr.
Rahul Nerlekar, learned counsel for respondent Nos.3 and 4.

2. This petition has been filed under Article 226 of the
Constitution of India, seeking the following reliefs :-

- i) directing respondent Nos.1 to 3 to implement in letter and spirit provisions of the Right of Persons With Disabilities Act, 2016 and the rules framed thereunder;
- ii) for a direction to respondent Nos.1 and 3 to make policies providing for reservation in promotion for persons with disabilities;

iii) for a direction to respondent Nos.1 and 3 to carry out identification of posts which can be held by such persons with disabilities and thereafter to provide for reservation in promotion to persons with disabilities in the identified posts;

iv) to direct respondent Nos.1, 2 and 3 to promote the petitioner to the post of Assistant Registrar – Class 2, Industrial Court, Mumbai with effect from the date of his eligibility for promotion under the Right of Persons With Disabilities Act, 2016;

v) Post amendment, petitioner has sought for quashing of the Government Resolution dated 24.02.2021 and seeks a direction to the respondents to include and consider persons with disabilities in both legs as eligible for promotion in posts identified for persons with disabilities.

3. It is stated that petitioner is a person with disability as defined under the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 as well as under the successor Act i.e. Right of Persons with Disabilities Act, 2016. As per the disability certificate dated 08.06.2011 issued by the Sir J. J. Group of Hospitals, Mumbai, petitioner has been certified to be suffering from 90% disability of non-progressive nature in both the legs.

4. Petitioner entered into service in the Labour Court, Mumbai in Class 'C' post of Clerk Typist vide order dated 07.05.2004. In the course of his service, he was promoted to the post of Senior Clerk, Class 'C' in the Workmen Compensation Commissioner's Court, Mumbai. He was thereafter promoted to the post of Clerk, Class 'C', Labour Court, Mumbai

vide order dated 28.06.2011. Following inter departmental transfer, petitioner was posted as Clerk in the Industrial Court, Mumbai vide order dated 31.05.2013 in which post he is presently serving.

5. Petitioner has asserted that his service record has been without any blemish and he is now due for promotion to the next higher post of Assistant Registrar, Class 2. In this connection, he had made a number of representations before the authority but without much success compelling him to approach this Court by way of the present writ petition seeking the reliefs as indicated above.

6. The hurdle to such promotion of the petitioner was in the form of Government Resolution dated 24.02.2021 which provided that for the promotional post of Assistant Registrar in the Industrial Court the disability should be *inter alia* confined to one arm or one leg whereas petitioner suffers disabilities in both the legs. Therefore petitioner filed an interim application being Interim Application (L) No.10542 of 2021. The said interim application was disposed of on 29.06.2021 in the following terms :-

“7. So far as Writ Petition No.87 of 2021 is concerned, (Jagdish S. Parbalkar v/s. State of Maharashtra), we record the statement of the learned Advocate General that the Petitioner in the said Petition shall not be held ineligible only on account of disability in both legs (BL) as classified in the GR dated 24-02-2021.

8. In view of the aforesaid statement of the learned Advocate General, the Interim Application (L) No.10542 of

2021 in Writ Petition No.87 of 2021 is worked out and shall stand disposed of.”

7. In the proceedings held on 08.07.2021, learned counsel for respondent Nos.3 and 4 made a statement that Industrial Court, Maharashtra, Mumbai has issued letter dated 06.07.2021 whereby a Departmental Promotional Committee has been constituted to consider candidature of the petitioner for promotion. He also stated that in view of the new Government Resolution dated 01.07.2021, it has been clarified that disability in both legs would be recognized as benchmark disability.

8. In the hearing today, learned counsel for respondent Nos.3 and 4 has again produced before us a copy of letter dated 06.07.2021 issued by the incharge Registrar of the Industrial Court, Maharashtra, Mumbai addressed to the Registrar General of the High Court stating that Departmental Promotional Committee has been constituted and the process for considering promotion of the petitioner has commenced.

9. Having regard to the above, we are of the view that it may not be necessary to enter into the larger issue as raised by the petitioner which are presently being dealt with by us separately in a bunch of writ petitions. The recent Government Resolution dated 01.07.2021 has clarified that for promotion to the post of Assistant Registrar in Industrial Court, Maharashtra, Mumbai disabilities in one leg as well as disabilities in both legs would be considered as benchmark disabilities. Since the Departmental Promotional Committee has been constituted to consider promotion of the petitioner to the post of Assistant Registrar as a person

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with disability and the process has been initiated, we are of the view that the same should be expedited and brought to its logical conclusion.

10. Accordingly, we direct respondent Nos.3 and 4 to complete the promotional exercise being undertaken by the Departmental Promotional Committee constituted on 06.07.2021 by considering the case of the petitioner as a person with disability within a period of six weeks from the date of receipt of a copy of this order.

11. With the above direction, writ petition is disposed of.

12. All connected interim applications are also disposed of.

BALAJI
GOVINDRAO
PANCHAL

Digitally signed by
BALAJI GOVINDRAO
PANCHAL
Date: 2021.09.21
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MADHAV J. JAMDAR, J

UJJAL BHUYAN, J