

WRIT PETITION NO.7288 OF 2019

- Versus -

Shri A.M. Deshpande, Additional Government Pleader for Respondents.

DATE : 23 FEBRUARY 2021

P.C. :

Heard learned Counsel for the parties.

2) The Petitioners have challenged the orders passed by the Maharashtra Administrative Tribunal, Nagpur on 15 June 2017 dismissing the Original Application filed by the Petitioners and on 19 March 2018 rejecting the Review Application filed by the Petitioners.

3) The Petitioners were appointed on the posts of Driver in

the Earth Water Survey and Development Department of the State of Maharashtra sometime in the year 1974. The Petitioner No.1 superannuated on 31 May 2011 and the Petitioner No.2 superannuated on 30 October 2009. The Petitioners filed an Original Application in the Tribunal bearing No.829/2011 seeking higher pay scale from 1 October 1994. The Petitioners sought a declaration to that effect from the Tribunal. The claim for higher pay scale was based on the Circulars issued by the State Government informing Group "C" employees in respect of promotional benefits.

4) The Tribunal referring to the fact that the Petitioners were offered promotion to the post of Air Compressor Driver on 29 April 1988, which they refused and as per the Government Resolutions dated 8 June 1995 and 1 November 2008 they relinquished their claim to the time bound promotion, dismissed the Original Application by the impugned order dated 15 June 2017. The Petitioners filed a Review Application on 24 July 2017, which was rejected by the Tribunal by the impugned order dated 19 March 2018.

5) As regards the letter written by the Petitioners, based upon which the Tribunal has negated the claim of the Petitioners, Shri Bhuyar, learned Counsel for the Petitioners, submits that

this will not be a refusal to accept promotion as what was offered was not promotion in the first place. Two contentions were taken in the Review Application – firstly, there is no promotion from the post of Driver to the post of Air Compressor Driver, which can be seen from the fact that same pay scale is applied to both the posts and the work of Air Compressor Driver is only a different specialised work and secondly, one Air Compressor Driver, who had also refused to hold the said post, was given the benefit of higher pay scale and, therefore, there is a discrimination.

6) According to us, these two points go to the root of the case as if the Petitioners are to be non-suited on the ground that they had refused promotion, the Tribunal will have to consider whether there is a promotion from the post of Light Motor Vehicle Driver to the post of Air Compressor Driver. For that purpose, factual enquiry will have to be made. Factual enquiry will also have to be made in respect of charge of discrimination. Therefore, the matter will have to be remanded to the Tribunal to carry out these enquiries and take a decision as per law.

7) In the circumstances, the impugned orders dated 19/3/2018 and 15/6/2017 passed by the Tribunal are quashed and set aside. Original Application bearing No.829/2011 stands

restored to the file of the Tribunal. The Petitioners will appear before the Tribunal on 8 March 2021 when further date would be assigned. Subject to workload and earlier time bound commitments, the Tribunal will consider taking up the restored application at the earliest.

8) Writ Petition is disposed of accordingly.

(ANIL S. KILOR, J.)

(NITIN JAMDAR, J.)

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**Kamal
Jeswani** Digitally signed
by Kamal Jeswani
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