

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.2301 OF 2021

1. State of Maharashtra, through its
Secretary, Department of Medical
Education and Research, Mantralaya,
Mumbai-32.
2. The Dean,
Government Medical College, Nagpur.
3. The Director of Medical Education and
Research, Mumbai-400001. **PETITIONERS**

..V E R S U S..

Smt. Mamta Manohar Kale,
Aged about 67 years,
Plot No.50, Shri Panchkrishna Nagar,
Near Datta Mandir & V. T. Convent
Beltarodi Road, Nagpur 440037. **RESPONDENT**

Mr. N. S. Rao, AGP for Petitioners.
Mr. Bharat Kulkarni, Advocate for Respondent.

CORAM: ROHIT B. DEO AND ANIL L. PANSARE, JJ.
DATED:29.08.2022

ORAL JUDGMENT: (PER ROHIT B. DEO, J.)

Heard Mr. N. S. Rao, the learned Assistant
Government Pleader for the petitioners and Mr. Bharat Kulkarni,
the learned counsel for the respondent.

2. The State of Maharashtra is assailing the judgment dated 25.01.2021 rendered by the Maharashtra Administrative Tribunal (MAT), whereby allowing the application preferred by the respondent, the State of Maharashtra is directed to grant first time bound promotion to the respondent from 01.10.1994, considering her as candidate belonging to the handicapped category, and to further pay the consequential financial benefits.

3. Respondent – Smt. Mamta Manohar Kale, who shall be hereinafter referred to as the employee approached the MAT vide application dated 27.08.2018 with prayers as are extracted below:

[I.] Direct the Respondent No.2 to grant the benefit of 1st Time Bound promotional pay scale from 1/10/1994 after 12 years continuous service.

[II.] Direct the Respondent No.2 to revise the pension of applicant after granting corresponding scale.

[iii] Direct the Respondent No.2 to grant the claim of Pay scale with arrears of pay & allowances & pension with interest.

[iv] Any other relief deemed proper in the facts and circumstances of the case, in the interest of justice.

4. The case of the employee is that she was appointed as

Junior Clerk (Record Clerk) on 22.09.1980, she completed 12 years service on 22.09.1992 and was entitled for the first time bound promotional scale from 01.10.1994 in view of the Government Resolution dated 08.06.1995. The employee contended that she was appointed against the physically handicapped – quota at the Government Medical College, Nagpur and she superannuated on 30.09.2008. The employee contended since she was not granted the benefit of the first time bound promotional scale, she submitted representation seeking regular promotion as Senior Clerk and requested that she be posted at Nagpur as she is physically handicapped and is protected by Government Circular dated 07.10.1987. The employee contended that on 02.12.1995 the Director of Medical Education and Research granted her promotion to the post of Senior Clerk and posted her at Dhule and thereafter at Yavatmal vide order dated 22.07.1998. The employee contended that she informed the Director on 12.12.1995 that since she is physically handicapped it would not be possible to leave Nagpur. She requested the said authority to modify the promotional order and post her at Nagpur. It was at her request that she was posted at Nagpur as Senior Clerk vide order dated 22.12.1998. The employee claimed that

despite the representation preferred, there was no response till she superannuated. It is on these broad assertions that she sought the relief noted *supra*.

5. The State opposed the application on two grounds. The first ground was that the application was barred by limitation and other submission was that in 1995 she refused promotion which disentitles her from the time bound promotional scale.

6. In so far as the refusal of promotion is concerned, the employee refused the promotion since it was impossible for her to leave Nagpur since she was dependent on her family members. In the peculiar facts, we do not find any substance in the reliance placed by the State on the Government Resolution dated 08.06.1995 for denying the time bound promotional scale.

7. In so far as the objection premises on limitation, the learned counsel for the employee has invited our attention to the decision of the Hon'ble Supreme Court in *M. L. Patil (Dead) Through Lrs. v. State of Goa and Another* 2022 SCC OnLine SC 685 to buttress the submission that pension furnishes continuous

cause of action. Even *de hors* the said aspect, we are not inclined to interfere with the judgment of the MAT to the extent the employee is held entitled to grant time bound promotional scale on completion of 12 years of service. However, the date of effect will have to be modified, considering that the employee approached the MAT 10 years after her superannuation. In our view, balance can be struck by modifying the judgment impugned.

8. The judgment impugned is affirmed to the extent the employee is held entitled to the first time bound promotional scale w.e.f. 01.10.1994. However, we clarify that the employee shall be entitled to the consequential monetary benefits including the revised pension w.e.f. the date on which she approached the MAT which is 27.08.2018. The arrears shall be paid to the employee within the next three months, failing which the amount shall attract at the rate of 9% per annum. The petition is disposed of, in the aforestated terms.

(ANIL L. PANSARE, J.)

(ROHIT B. DEO, J.)