

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

WRIT PETITION NO. 3347 OF 2008

Madhukar s/o Somaji Jambhule,
Aged about 57 years, Occupation-Service,
R/o. Sheikh Hamid Sk.Yusuf,
Near Noorie Masjid, Station-5, Wardha.

... **Petitioner**

-versus-

1. The Managing Director,
Maharashtra State Electricity Distribution Company
Limited (MSEDCL),
Plot No.G-9, Prakashgarh, Bandra (East),
Mumbai.
2. The Managing Director,
Maharashtra State Electricity Transmission Company
Limited (MSETCL),
Plot No.C-19, E-Block, Prakash Ganga,
Bandra-Kurla Complex, Bandra (East),
Mumbai.

... **Respondents.**

Shri P.R. Parsodkar, Advocate for petitioner.
Ms Mohini Sharma, Advocate h/f Shri S.V.Purohit, Advocate for respondents.

CORAM : A.S.CHANDURKAR and URMILA S.JOSHI-PHALKE, JJ.

DATE : 7th JUNE, 2022.

ORAL JUDGMENT (Per A.S.CHANDURKAR, J.)

The petitioner who claims to belong to 'Mana' Scheduled Tribe was appointed with the respondent no.1 on the post of 'Sub-Engineer' on 26.11.1971. He was subsequently promoted on 18.10.1980 as 'Junior Engineer'. Thereafter on 21.06.1996 he was promoted to the post of 'Assistant Engineer' and subsequently on 19.05.1999 as 'Deputy Executive Engineer'. Since the petitioner claims to belong to 'Mana' Scheduled Tribe, his caste

certificate was referred to the Scrutiny Committee for verification. When the said proceedings were still pending, orders of promotion were issued to various Deputy Engineers on 05.11.2004. It is the case of the petitioner that in the seniority list, the petitioner was placed at serial no.234. However two other Deputy Engineers who were placed at serial nos. 260 and 263 belonging to the Scheduled Tribe category came to be promoted before him. A caste validity certificate was issued to the petitioner on 19.03.2008. This was pursuant to the directions issued by this Court in Writ Petition No.3459 of 2007 by which the Scrutiny Committee was directed to decide the said proceedings expeditiously. On receiving the caste validity certificate, the petitioner made various representations seeking deemed date of promotion in view of the fact that the juniors to him had been promoted. Since there has been no response to the said representations, the petitioner has filed the present writ petition.

2. Shri P.R. Parsodkar, learned counsel for the petitioner submits that in the light of the admitted fact that the petitioner has been issued validity certificate on 19.03.2008 and he was denied promotion only on the ground that he did not possess validity certificate, it was clear that after receiving such validity certificate, he would be entitled to deemed date of promotion being 05.11.2004 when his juniors were promoted. He submits that immediately

after receiving the validity certificate, the petitioner was promoted on 09.06.2008. The only reason for not promoting the petitioner earlier was the absence of a validity certificate. He therefore submits that the petitioner is entitled for necessary relief.

3. Ms. Mohini Sharma, learned counsel for the respondents has opposed the prayers made in the writ petition. It is submitted that since the petitioner did not possess validity certificate, he was rightly not granted promotion on 05.11.2004. After the petitioner obtained the validity certificate, he was promoted on 09.06.2008. Hence the petitioner was not entitled for any relief whatsoever.

4. On perusing the documents on record we find that on 05.11.2004 the Deputy Executive Engineers at serial nos. 260 and 263 who were junior to the petitioner and belonging to the Scheduled Tribe category came to be promoted. The petitioner was placed at serial no. 234 in the said seniority list. It is only on account of absence of a validity certificate that the petitioner was not promoted to the post of Executive Engineer. Since the proceedings for verification were pending when the orders of promotion were issued on 05.11.2004 coupled with the fact that the petitioner was issued a validity certificate on 19.03.2008, it is clear that the petitioner would be entitled to the benefit of such validity certificate. Though the petitioner was promoted on

09.06.2008, he was entitled to be so promoted on 05.11.2004 itself when his juniors were promoted. There is no reason to deny the relief of grant of deemed date of promotion to the petitioner. We therefore find that the petitioner would be entitled to the aforesaid relief. Since the petitioner has now superannuated, he would be entitled to seek aforesaid benefit only to receive pensionary benefits.

5. In view of aforesaid, it is held that the petitioner is entitled for deemed date of promotion from 05.11.2004 on which date his juniors were promoted. Though the petitioner would not be entitled for any arrears of salary on the promotional post from 05.11.2004 to 09.06.2008, he would be entitled to receive pensionary benefits by treating him as having been promoted on the post of 'Executive Engineer' on 05.11.2004. The respondents shall take necessary steps in accordance with law expeditiously to grant such benefits to the petitioner, preferably within a period of three months of receipt of copy of the judgment.

Rule is made absolute in aforesaid terms. No costs.

(URMILA S. JOSHI-PHALKE, J.)

(A.S.CHANDURKAR, J.)