

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

WRIT PETITION NO.122 OF 2010

**The State of Maharashtra, thr.its Principal Secretary, Planning Department,
Mantralaya, Mumbai-32 and ors**

..VS..

Sopan Kawaduji Sawarkar

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders

Court's or Judge's Order

.....
Mrs.K.R.Deshpande, Assistant Government Pleader for the Petitioners.
None for the Respondent.

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

DATED : 15/7/2022

P.C.

1. On 12.7.2022, the following order was passed:

"There was no appearance on behalf of the respondent on 26.02.2022, 20.04.2022 and thereafter on 04.07.2022.

Today, there is no appearance on behalf of the respondent. To grant final opportunity to the respondent, put up on 14.07.2022.

It is made clear that if the respondent remains absent on the next date, the Court would consider adjudicating the writ petition after hearing the learned Assistant Government Pleader for the petitioners."

2. Today, when the matter is called out, there is again no appearance on behalf of the respondent. We have, therefore, heard Mrs.K.R.Deshpande, learned Assistant Government Pleader for the

petitioners, and have perused documents placed on record.

3. The respondent was appointed as Statistical Assistant on 5.5.1964. It is the case of the respondent that for being eligible for the post of Research Assistant he was to be promoted, but juniors to him were granted benefit of the post of Research Assistant from 14.5.1976. The respondent was not granted such benefit from that date, but was held entitled to the same from a later date. Being aggrieved, the respondent approached the Maharashtra Administrative Tribunal by filing Original Application No.133 of 1998. The Tribunal by its judgment dated 25.9.2008 held that though it was the stand of the petitioners that the Departmental Examination ought to be passed for getting benefit of the post of Research Assistant, various juniors to the respondent had been granted such benefit without passing that examination. It was found that the respondent had not been fairly dealt with and hence it directed grant of deemed date of promotion as Research Assistant to the respondent from 14.5.1976. Being aggrieved by the aforesaid judgment, the State Government has challenged the same in the present writ petition.

4. Mrs.K.R.Deshpande, learned Assistant Government Pleader for the petitioners, at the outset submitted that after the order passed by the Tribunal was perused, a Review Application was preferred seeking to point out that one Shri S.D.Gham had been granted the benefit of the post of Research Assistant only on completion of age of 45 years and not on 14.5.1976 as alleged. However, the Tribunal did not condone the delay in filing the Review Application and rejected the same. It was submitted that there were no documents on record to substantiate the finding recorded by the Tribunal that Shri S.D.Gham had been given date of 14.5.1976 to enable him to receive the benefit of the post of Research Assistant. His promotion was fortuitous and his seniority on that post was fixed when he became entitled to exemption from passing the Departmental Examination on completion of age of 45 years. Insofar as the respondent was concerned, his seniority was fixed on completion of

age of 45 years on 12.1.1984 and, therefore, the Tribunal was not justified in holding him entitled to such benefit from 14.5.1976. These aspects having material bearing were not considered by the Tribunal and the attempt of the petitioners to bring the same to the notice of the Tribunal by filing the Review Application was failed. It was thus submitted that the judgment of the Tribunal was liable to be set aside for these reasons.

5. When the writ petition was admitted on 14.6.2010, an *interim* order was passed granting deemed date to the respondent from 31.5.1983 while staying the order passed by the Tribunal. The respondent has not filed any return on record. We have perused the grounds raised by the respondent in the Original Application.

6. The order passed by the Tribunal indicates that it has proceeded on the basis that Shri S.D.Gham who was junior to the respondent had been granted benefit of promotion as Research Assistant from 14.5.1976. There are, however, no documents on record to substantiate this conclusion. On the contrary, what is found from the record is that the respondent was appointed as Statistical Assistant on 5.5.1964. Shri S.D.Gham was appointed as Statistical Assistant on 19.10.1966. Though he was senior in age, he was junior in service to the respondent. The date of birth of Shri S.D.Gham is shown to be 1.6.1938 and attained the age of 45 years on 31.5.1983. Insofar as the respondent is concerned, he attained the age of 45 years on 24.3.1985. On the date when Shri S.D.Gham, who was junior to the respondent was granted exemption from appearing in the Departmental Examination, he was granted benefit of the post of Research Assistant on 31.5.1983. He being junior to the respondent, the respondent would also be entitled to similar benefit from 31.5.1983. As stated earlier, there is no material on record to indicate that any junior to the respondent was granted promotion on the post of Research Assistant from 14.5.1976. We find that these aspects were sought to be brought to the notice of the Tribunal in the Review Application, but the delay in preferring the same was not

condoned. In absence of any opposition to the factual aspects mentioned in the Review Application, which have material bearing on the issue in question, we find no reason to discard that information.

7. For the aforesaid reasons, we find that the Tribunal erred in coming to conclusion that juniors to the respondent had been granted benefit on the post of Research Assistant from 14.5.1976. Such benefit having been granted from 31.5.1983, the respondent would also be entitled for similar benefit. For the aforesaid reasons, the judgment of the Maharashtra Administrative Tribunal dated 25.9.2008 in Original Application No.133 of 1998 is partly modified. It is held that the petitioners shall grant benefit of deemed date of promotion to the respondent as Research Assistant from 31.5.1983. The *interim* order passed on 14.6.2010 is made absolute.

8. Rule is accordingly made partly absolute in the aforesaid terms with no order as to costs.

(URMILA JOSHI-PHALKE, J.)

(A.S.CHANDURKAR, J.)

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