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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 285 of 2022

Shri. Lekshmanan S., 67 years of age, Indian National, Residing at Flat No. A-5, Electricity Department Quarters, Zuarinagar, Sancoale, Goa.

... PETITIONER

Versus

1. The Chief Secretary, State of Goa, Secretariat, Porvorim, Bardez, Goa.
2. The Power Secretary, State of Goa, Secretariat, Porvorim, Bardez, Goa.
3. The Secretary, Personnel Department, State of Goa, Secretariat, Porvorim, Bardez, Goa.
4. The Chief Electrical Engineer, Government of Goa, Electricity Department, Vidyut Bhavan, Panaji, Goa.

... RESPONDENTS

Mr. Dattaprasad D. Lawande with Mr. Jay Mathew, Advocates for the Petitioner.

Ms. Sapna Mordekar, Additional Government Advocate for the Respondents.

CORAM:

**PRAKASH D. NAIK &
BHARAT P. DESHPANDE, JJ.**

RESERVED ON:

11th AUGUST 2023

PRONOUNCED ON:

25th AUGUST 2023

JUDGMENT: (per Bharat P. Deshpande, J.)

1. Rule. Rule is made returnable forthwith. This matter is taken up for final disposal at the stage of admission itself with the consent of both parties.

2. Heard Mr. Dattaprasad Lawande who appears with Mr. Jay Mathew, learned Counsel for the Petitioner and Ms. Sapna Mordekar, learned Additional Government Advocate for the State.

3. The substantive reliefs claimed in the Petition are as per prayer clauses (a) and (b), quoted for perusal as under:

“a. That this Hon’ble Court be pleased to issue a Writ of Mandamus, or a Writ in the nature of Mandamus, or any order, directing the Respondents to treat the Petitioner as Regular Superintending Engineer (Electrical) with effect from June 2012 and accordingly, to fix the Petitioner’s last drawn pay scale and pensionary benefits;

b. That his Hon’ble Court be pleased to issue a Writ of Mandamus, or a Writ in the nature of Mandamus, or any Order, directing the Respondents to treat the Petitioner as Ad-hoc Chief Engineer (Electrical) with effect from June, 2014 and accordingly, to fix the Petitioner’s last drawn pay scale and pensionary benefits.”

4. The Petitioner approached this Court in the year 2010 by filing Writ Petition No. 283 of 2010, which was decided by this Court vide its judgment dated 01.09.2015.

5. The said Writ Petition was partly allowed and the Petitioner who had retired, was to be treated as promoted in the year 2007 to

the post of Executive Engineer for the purpose of computing his last pay and getting his pensionary benefits in accordance with law. This order was passed since the Petitioner retired on superannuation in the year 2014 itself i.e. during the pendency of this Petition. The said order was complied with by the Respondents. However, it is the further grievance of the Petitioner that though he was promoted on regular basis to the post of Executive Engineer with effect from 2007 itself, he was further entitled to be promoted to the post of Superintending Engineer and thereafter, to the post of Chief Engineer.

6. It is the case of the Petitioner that he was promoted as adhoc Superintending Engineer in the year 2012 though he was senior most and there was a vacancy and no other individual in the Department was within the zone of consideration except the Petitioner. He was promoted only on adhoc basis but not on a regular basis. No doubt, at that time, Writ Petition No. 283 of 2010 was pending for disposal, however, there was no other reason for promoting the Petitioner only on adhoc basis though he was within the zone of consideration, the senior most and the only employee entitled to be promoted at the relevant time.

7. It is then contended by the Petitioner that as per the judgment of this Court in Writ Petition No. 283 of 2010, since the Petitioner

was considered as regularly promoted to the post of Executive Engineer in the year 2007 itself, he completed the requisite services to be considered for promotion to the next post, which was denied to him without giving any plausible reasons.

8. It is further contended by the Petitioner that though he was promoted on adhoc basis to the post of Superintending Engineer on 06.06.2012 and thereafter, was officiating as Chief Engineer vide order dated 28.03.2013 initially for a period of six months and thereafter, extended from time to time, he ought to have been promoted to the post of Chief Electrical Engineer atleast on adhoc basis and not only officiating on the said post. According to him, by doing so, he was deprived of his legitimate rights and finally, it affected his pensionary benefits.

9. It is further contended by the Petitioner that after the decision passed by this Court in Writ Petition No. 283 of 2010 dated 01.09.2015, the Respondents ought to have treated the Petitioner on regular basis to the post of Superintending Engineer w.e.f. June 2012. By that date, the Petitioner had completed 5 years of regular service in the grade of Executive Engineer. Thereafter, the Respondents ought to have considered or treated the Petitioner as promoted on adhoc basis to the post of Chief Electrical Engineer w.e.f. June 2012 upon completing 2 years of service as regular

Superintending Engineer. By not doing so, the Petitioner suffered financial loss. Similarly, his right to get promoted at the relevant time is also affected as provided under Articles 14 and 16(1) of the Constitution of India.

10. The Respondents filed affidavits in reply opposing the Petition. Respondent No. 3 filed an affidavit whereas Respondent No. 4 filed a separate affidavit. Respondent No. 3 claimed in paragraph 4 that the matter pertaining to the promotion of the Petitioner upto Superintending Engineer is within the purview of Respondent Nos. 3 and 4 and as such, Respondent No. 3 is answerable. The contention in the Petition is only in connection with his claim for the promotion to the post of Chief Electrical Engineer. The affidavit further discloses that the Petitioner is not entitled to be treated as promoted as per the dates claimed by him in the Petition. It is their contention that the Petitioner was not promoted on regular basis to the post of Chief Electrical Engineer, but was asked only to officiate on the said post in addition to his own duties as Superintending Engineer. Such an arrangement was made so that the then Chief Engineer who was on extension of service could be relieved from his duties.

11. The affidavit further shows that since the Petitioner was holding the post of Superintending Engineer on adhoc basis and was

made to officiate as Chief Electrical Engineer in addition to his own duties, he was not entitled to be promoted to the post of Chief Electrical Engineer or even on adhoc post.

12. The affidavit filed on behalf of Respondent No. 4 is again opposing the claim of the Petitioner on the ground that the order passed by this Court in Writ Petition No. 283 of 2010 was with the direction only to consider the Petitioner as promoted to the post of Executive Engineer on regular basis from the year 2007 for computing his last pay and for getting the pensionary benefits. The said order was complied with. The Petitioner was therefore not entitled to further promotion.

13. Respondent No. 4 further contended in its affidavit that the proposal for regularization of the Petitioner to the post of Superintending Engineer was referred to GPSC on 18.07.2014. The GPSC vide their letter dated 07.01.2015 raised observation regarding some vigilance certificate being invalid and asked for a fresh vigilance certificate. Accordingly, a letter was addressed to the Vigilance Department calling for a fresh vigilance certificate, however, the Vigilance Department did not forward the certificate for a very long time and in the meantime, the Petitioner retired on 30.11.2014 on attaining the age of superannuation.

14. Respondent No. 4 further contended that the services of the Petitioner from the year 2007 till 2012 are not liable to be counted as regular service in the post of Superintending Engineer and that he is not entitled for counting such period from 2012 till the date of his retirement as regular service for the post of Chief Electrical Engineer. It is further claimed that if the Petitioner is deemed to be promoted as Superintending Engineer on regular basis from 2012 as claimed, then as per the Recruitment Rules, he will complete 5 years of regular service as Superintending Engineer only in the year 2017.

15. The Petitioner was due for retirement on 30.11.2014 by superannuation and therefore, he was not coming within the zone of consideration for the post of Chief Electrical Engineer. He further claimed that no employee could be given a promotion while he superannuated from services.

16. It is further contended by Respondent No. 4 that the post of Superintending Engineer is required to be filled by promotion with 5 years of regular service as Executive Engineer. Vide order dated 28.03.2008, the Petitioner was given regular promotion to Executive Engineer and vide order dated 06.06.2012, the Petitioner was then promoted to the post of Superintending Engineer on adhoc basis.

17. Respondent No. 4 then further contended that though the Petitioner himself was the Head of the Department in the year 2013,

he failed to move a proposal to the GPSC for regularization of his promotion after completing his 5 years of regular service as Executive Engineer. There was no other person superior to the Petitioner at the relevant time and it was for the Petitioner himself to process and refer the file to GPSC for regular promotion. The GPSC could have taken the decision on the said recommendation. Since the Petitioner himself failed to perform his duties as the Head of the Department, he cannot blame the Respondents for the delay.

18. Respondent No. 4 further claimed that upon receipt of recommendations, the GPSC vide their letter dated 07.01.2015, raised an objection regarding the vigilance certificate which was issued more than one year ago and therefore, the GPSC requested for a fresh vigilance certificate. The Vigilance Department did not furnish a fresh certificate for a long time. In the meantime, the Petitioner retired on 30.11.2014 on attaining the age of superannuation and therefore, his claim over the post of Chief Electrical Engineer on adhoc post or even otherwise, is not at all tenable.

19. The rival contentions fall for determination.

20. The Petitioner in his earlier Petition i.e. Writ Petition No. 283 of 2010 specifically claimed that he had been declined regular promotion when he was fulfilling all the criteria. He was promoted

on adhoc basis even though there were vacant posts and clear vacancies in the promotional post. When the Petitioner was satisfying all the criteria, eligibility, suitability etc. to be considered for the regular post, he was promoted only on adhoc basis. This Court has opined in paragraph 10 that the Petitioner since acquired Degree in Electrical in the year 1999 and completed 8 years of service only in the year 2007, he was eligible to be promoted as Executive Engineer only in the year 2007 and not from the year 2005 as tried to be claimed by him.

21. Unfortunately, the Petitioner stood retired on superannuation on 30.11.2014 whereas the Petition was decided on 01.09.2015. The observations of this Court in paragraph 14 are material and hence, quoted for reference:-

14. In such circumstances, such period in specific circumstances can be examined as from the date when there is a clear vacancy to the promotional post and the promotee satisfies the eligibility and suitability criterion. Consequently, in the present case, we find that the Petitioner was working on adhoc basis for such a post from the year 2005 and in fact, the Petitioner satisfies the eligibility and suitability criterion for promotion from the year 2007 and as such, the Petitioner is entitled to be treated as promoted to the regular post as an Executive Engineer as on 2007. To that extent, the Petition would succeed.”

22. This order was not challenged by the Respondents and therefore, it becomes final and binding on the respective parties. In compliance with the order of this Court, it is the contention of the Petitioner that he should have been treated as a regular Superintending Engineer w.e.f. June 2012 as by that time, he completed 5 years of service in the grade of Executive Engineer on regular basis.

23. There is no dispute about the Petitioner being treated as promoted to the post of Executive Engineer w.e.f. 2007. Accordingly, when he was considered as promoted on regular basis in the year 2007 itself, to the post of Executive Engineer from the year 2007, he completed 5 years of regular service in the said post.

24. The Respondents vide its order dated 07.02.2018, after a period of 2½ years from the date of the judgment of this Court dated 01.09.2015, considered the Petitioner to be treated as promoted to the post of Executive Engineer in the year 2007 for the purpose of computing his last pay and getting his pensionary benefits in accordance with law. The operative part of the said order issued by the Chief Electrical Engineer dated 07.02.2018 reads thus:-

“6. Now Therefore, in compliance with the Judgment and Order dated 01.09.2015, passed by the Hon’ble High Court of Bombay at Goa, the undersigned on behalf of the Government of Goa, considers that said Shri S.

Lekshmanan, who has since retired shall be treated as promoted in the post of Executive Engineer (Elect.) in the year 2007 for the purpose of computing his last pay and getting his pensionary benefits in accordance with law.”

25. There is no explanation coming forward from the Respondents for the delay in issuing such orders even though judgment was passed on 01.09.2015. It took more than 2½ years for the Respondents to issue a formal order of regular promotion of the Petitioner to the post of Executive Engineer.

26. Accordingly, it is clear from the record that if the Petitioner would have been considered as promoted to the post of Executive Engineer from the year 2007 itself on regular basis, he would have completed 5 years qualifying service to the post of Superintending Engineer.

27. Admittedly, a clear vacant post of Superintending Engineer was available. The Petitioner was promoted, but on adhoc basis to the post of Superintending Engineer in June 2012. By that time, he had completed regular service of 5 years in the post of Executive Engineer, which he got only by intervention and the order of this Court and that too, in the year 2018.

28. The Departmental Promotion Committee is duty bound to conduct the proceedings regularly so as to fill up the vacant post in the Department in a timely manner. It is the duty of the Head of the Department to forward the proposal along with the number of vacant posts, the employee coming within the zone of consideration and other details to GPSC. The GPSC is then required to conduct a departmental promotional process. At the relevant time, such promotions were carried out by the Departmental Promotion Committee constituted in-house by the Department itself and not through GPSC. Therefore, the delay in conducting the departmental promotional proceedings would certainly affect the rights of eligible employees to get their claims to be considered for the promotional post. It is a matter to be decided by the GPSC as to which of the candidate is suitable for the promotional post. The promotions on adhoc basis are made in exceptional circumstances and preferably when the candidates who are coming within the zone of consideration are not found suitable or that some material is required to be considered for appointing such person on a regular basis.

29. It is not the case of the Respondents that the Petitioner was not entitled to be considered for the promotional post for want of his eligibility criteria. By keeping an employee on adhoc basis on the promotional post for a longer period would certainly deprive him or

the suitable candidate of promotion. It is the duty of the Head of the Department or the Departmental Promotion Committee to take a decision as early as possible so that the posts do not remain vacant for long. There is no submission coming forward from the Respondents as to why the Petitioner was promoted only on adhoc basis to the post of Superintending Engineer. One of the reasons that appears to be probable is the pendency of the Writ Petition before this Court. However, after the decision was passed by this Court on 01.09.2015, directing the Respondents to treat the Petitioner on regular basis to the post of Executive Engineer from the year 2007, it was further incumbent upon the Respondents to consider him for the post of Superintending Engineer w.e.f. June 2012 as by that time he completed 5 years of regular service to the post of Executive Engineer. It is not even the case of the Respondents that apart from the Petitioner, there were other eligible candidates more suitable than the Petitioner to hold the said post. In fact, the Respondents have considered the Petitioner suitable for the post of Superintending Engineer in the year 2012 itself though on adhoc basis.

30. The consequence of the order of this Court dated 01.09.2015 ought to have been considered by the Respondents thereby accepting the eligibility and suitability of the Petitioner to be considered as promoted on regular basis to the post of

Superintending Engineer in June 2012. Only because the judgment of this Court was passed on 01.09.2015 i.e. after his superannuation, it was observed by the Respondents that the Petitioner is to be treated as promoted on regular basis to the post of Executive Engineer from the year 2007.

31. The learned Counsel for the Petitioner would submit that the Petitioner was under bonafide belief that on his promotion to the post of Executive Engineer w.e.f. 2007 as directed by this Court, though for the purpose of computation of his last pay and pensionary benefit, the Respondents by applying the same principles and analogy would have considered the case of the Petitioner to be promoted to the post of Superintending Engineer on regular basis from June 2012. He would submit that inspite of the order passed by this Court in the year 2015, the Petitioner had to struggle and file various representations to get his order for regular promotion to the post of Executive Engineer which was finally issued on 07.02.2018.

32. Learned Counsel for the Petitioner then would submit that only after passing of such order dated 07.02.2018, promoting the Petitioner on regular basis to the post of Executive Engineer w.e.f. 2007, he could count his services in the post of Executive Engineer on a regular post from 2007 till 2012 when he became eligible for the post of Superintending Engineer. Since the Petitioner made further

representations to promote him on a regular basis to the post of Superintending Engineer and there was no response, he had to approach this Court.

33. Ms. Mordekar appearing for the State would submit that the earlier order passed by this Court was only with respect to considering the services of the Petitioner on regular post from 2007 for the purpose of pensionary benefits. Therefore, the Petitioner is not entitled to further reliefs. She would further submit that the Petitioner is not at all entitled to claim promotion to the post of Chief Engineer since he did not complete the period of two years and by that time, he stood retired on superannuation.

34. As far as the contention of the Petitioner with regard to his claim for regular appointment to the post of Superintending Engineer from 2012 is concerned, there is no dispute that the Petitioner was the only employee having suitability and eligibility to be promoted to the said post of Superintending Engineer in June 2012. The reply filed by the Respondents nowhere disputes about the eligibility and suitability of the Petitioner to be considered for the post of Superintending Engineer from June 2012. It is only their contention that when he was considered for promotion, his services to the existing post were also adhoc and therefore, he was not eligible to be promoted on a regular basis. No doubt, at that time, it

was the situation as claimed by the Respondents, but the said situation changed by the judgment by this Court dated 01.09.2015 wherein the Petitioner was considered as regularly promoted in the year 2007 itself. Thus, while complying with the order of this Court, it was expected from the Department to consider the Petitioner as promoted on a regular basis to the post of Executive Engineer in the year 2007 itself. Accordingly, by June 2012, the Petitioner completed 5 years of qualifying services for the purpose of considering the matter for the post of Superintending Engineer on a regular basis.

35. As earlier discussed, the Department took 2½ years to comply with the order of this Court passed on 01.09.2015. However, the Department failed to consider further consequences which the Petitioner was entitled to, though not specifically granted by this Court in its earlier order. It cannot be claimed that the petitioner has waived his rights to the promotion to the post of Superintending Engineer from June 2012. Only after succeeding in the earlier Petition, he found himself eligible for the post of Superintending Engineer in the year 2012, though he was promoted on adhoc basis to the said post in the same year.

36. According to us, the Petitioner is therefore entitled to be treated as promoted to the post of Superintending Engineer on

regular basis from June 2012, only for the purpose of fixing his last pay for computing pension benefits. Since the Petitioner worked on the same post, though on adhoc basis, he was getting the salary as Superintending Engineer from June 2012 till the date of his retirement.

37. As far as the second contention of the Petitioner is concerned, we are of the considered opinion that he was not entitled to be considered for the post of Chief Electrical Engineer and that too on adhoc basis as tried to be claimed in the Petition. First of all, no employee is entitled to be considered for the promotional post on adhoc basis. Such right is only on a regular vacant post. The Petitioner was holding the post of Chief Electrical Engineer (officiating) w.e.f. 01.04.2013 for a period of six months vide order dated 28.03.2013. Thereafter, the Respondents granted extension to the Petitioner w.e.f. 01.12.2014 to 31.03.2015 as Chief Electrical Engineer (officiating). Another extension was granted to the Petitioner w.e.f. 01.04.2015 to 30.06.2015 as officiating Chief Electrical Engineer vide order dated 31.03.2015. The final extension was granted for a period of one month w.e.f. 01.07.2015 to 31.07.2015 vide order dated 30.06.2015. Admittedly, the date of superannuation of the Petitioner is 30.11.2014. Beyond the date of superannuation, the extensions granted by the Government from

time to time cannot be counted for the purpose of pensionary benefits or otherwise.

38. Accordingly, the Petitioner is entitled to be treated as regular Superintending Engineer (Electrical) w.e.f. June 2012 for the purpose of computing his last pay and getting his pensionary benefits in accordance with law. To that extent, the Petition would succeed. Hence, the following order:

O R D E R

- (a) The Petition is partly allowed.
- (b) The Petitioner who stood retired on superannuation on 30.11.2014 shall be treated as promoted to the post of Superintending Engineer (Electrical) on regular basis w.e.f. June 2012 for the purpose of computing his last pay and getting pensionary benefits in accordance with law.
- (c) Rule is made absolute in the above terms.

39. The Petition stands disposed of accordingly.

BHARAT P. DESHPANDE, J.

PRAKASH D. NAIK, J.