

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11760 OF 2019

Maruti Krishna GondhaliPetitioner
V/S
The State of Maharashtra & Ors.Respondents

WITH
WRIT PETITION NO.11759 OF 2019

Pushpalata Suryabhan PawarPetitioner
V/S
The State of Maharashtra & Ors.Respondents

WITH
WRIT PETITION NO.11761 OF 2019

Suresh Bapuji KulkarniPetitioner
V/S
The State of Maharashtra & Ors.Respondents

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Mr. Narendra V. Bandiwadekar i/b Ms. Ashwini N. Bandiwadekar for the
Petitioner in all WPs.
Mr. B.V. Samant, AGP for Respondents-State in all WPs.

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**CORAM: S.V. GANGAPURWALA, ACJ &
SANDEEP V. MARNE, J.**
DATE : 5 JANUARY 2023.

P.C.:

1 The Petitioners filed Original Application before the Tribunal seeking
benefits of the promotional posts.

2 The Petitioner in Writ Petition No.11759 of 2019 was working as Divisional Secretary at Pune and on 31 May 2018 was issued with the order of promotion as the Joint Director of Education. The said Petitioner was directed to join at Ratnagiri. The Petitioner in Writ Petition No.11760 of 2019 was working as a Deputy Director of Education at Kolhapur and was promoted as a Joint Director of Education on 31 May 2018 and directed to join at Aurangabad. The Petitioner in Writ Petition No.11761 of 2019 was working as a Deputy Commissioner, Maharashtra State Council of Examinations, Pune. He was promoted as a Joint Director of Education under an order dated 31 May 2018 and directed to join at Nagpur. All the three Petitioners stood retired on 31 May 2018 on the date of issuance of the order of promotion.

3 The Tribunal dismissed the claim of the Petitioners on the ground that the Petitioners had not joined at the promotional posts and cannot be given deemed date of promotion.

4 We have heard Mr. Bandiwadekar, learned Advocate for the Petitioners and learned AGP for the Respondents.

5 The learned Advocate for the Petitioners submits that the Petitioners had made representations but the same were rejected by the Respondent-Authority on 15 September 2018. The reasons mentioned are illegal. In fact

the Petitioners did not seek a deemed date of promotion but were seeking benefits of the promotional posts. The said aspect is not considered by the Tribunal.

6 The learned AGP submits that there is no provision under which the Petitioners could be given a deemed date of promotion, the same has been rightly considered. The Petitioners had not joined the promotional posts.

7 We have considered the submissions. The factual matrix does not seem to be disputed. All these Petitioners were issued with the promotional orders of being promoted as Joint Director of Education on 31 May 2018. On 31 May 2018 the Petitioners were relieved. 31 May 2018 is also the date the Petitioners attained the age of superannuation. The posting was given to the Petitioners at different places than the place they were officiating. It was physically impossible for any person to join at the transferred place on the very same day the order was issued. The Petitioner Pushpalata who was working at Kolhapur as a Divisional Secretary was transferred on promotion to Ratnagiri at the distance of 350 k.m. The Petitioner Maruti working as Deputy Director of Education at Kolhapur was promoted and transferred as a Joint Director of Education at Aurangabad that is at the distance of 500 k.m. and the Petitioner Suresh was working as a Deputy Commissioner, Maharashtra State Council of Examination at Pune was

transferred to Nagpur on the promotional post at the distance of 800 k.m. The Petitioners were issued with the order of promotion on the day the Petitioners were to retire from service and they were not posted at the same place but were transferred at different places. It was physically not possible for these Petitioners to join at the transferred places on promotion at the distance of more than 350 k.m. in each case.

8 It appears that the Petitioners under wrong premise in the representations sought a deemed date of promotion. The Respondent Authority and the Tribunal considered the case of the Petitioners on the basis that they are claiming a deemed date of promotion.

9 In fact the Petitioners were already promoted on 31 May 2018 and they were claiming the benefit of the promotional posts on and from the date the Petitioners were issued with the orders of promotion. It cannot be a case of deemed date of promotion.

10 It is because of the impossibility that it was physically not possible to join at the place they were transferred on promotion, the charge could not be taken on the promotional posts.

11 Nonetheless the Petitioners are validly issued with the regular promotional orders after recommendation of the Departmental Promotion Committee.

12 In light of the above, we set aside the order passed by the Tribunal and the order passed by the Respondent Authority rejecting the representations of the Petitioners. The Respondent Authority shall treat the Petitioners as having retired on attaining age of superannuation on the posts of Joint Director of Education that is the post on which they were promoted under the promotional order dated 31 May 2018. Consequential benefits shall follow.

13 Rule accordingly made absolute. The Writ Petition is disposed of. No costs.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)

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by
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