



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

WRIT PETITION NO.2084/2022

Santosh Manasaram Tale and others Vs. State of Maharashtra & others

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

Court's or Judge's orders

Mr. Pravin S. Patil, Advocate for petitioners.
Ms. Kalyani Deshpande, AGP for respondent nos.1 and 2.
Mr. U.J. Deshpande, Advocate for respondent no.3.

CORAM :PRITHVIRAJ K. CHAVAN AND URMILA JOSHI-PHALKE, JJ.
DATED : 06/10/2023

1. Heard learned counsel for the petitioners as well as learned AGP for respondent nos.1 and 2 and learned counsel for respondent no. 3.
2. The petitioners have invoked writ jurisdiction of this Court, by making following substantive prayers:

“(i) Hold and declare that, the service rendered by petitioner no.1 from 18.12.1996 to 15.04.2015 in class-4 category, petitioner no.2 from 21.05.1997 to 15.04.2015 in class-4 category and petitioner no.3 from 01.08.2005 to 15.04.2015 in class-4 category should be consider as a service period and be counted for the benefit of continuity and other service benefits including pensionary benefits after re-appointment in class-3 category vide appointment order dated 15.04.2015 (Annexure-VII) in the interest of justice.

(ii) Hold and declare that, petitioners are entitle for deem date appointment in class-3 category w.e.f. their initial appointment i.e. 18.12.1996 (Annexure-II), 21.05.1997 (Annexure-III) and 01.08.2005 (Annexure-IV) respectively and accordingly direct the respondent no.3 Zilla Parishad to issue the fresh re-appointment orders to the petitioners by modifying the re-appointment orders dated 15.04.2014 (Annexure-VII) with all consequential benefits of service including continuity of service and back-wages in the interest of justice.

(iii) Quash and set aside the order cum communication of respondent no.2 Divisional Commissioner, Amravati dated 14.09.2021 (Annexure-XII) in the interest of justice.

(iv) Direct the respondent no.2 Divisional Commissioner, Amravati to conduct enquiry and verify who is responsible for not recording the conditions in the appointment order of the petitioners as per GR dated 20.08.1996 (Annexure-I) that “as and when the post of Class-3 category will be available, they will be consider for appointment in Class-3 category” in pursuance of directions issued by State Government vide its Government Circular dated 30.01.2010 (Annexure-V) within a time bound period and accordingly fixed the responsibility on the said Officer for violating the norms laid down by State Government in the interest of justice.

(v) Direct the respondent Zilla Parishad, Akola to implement the Government Circular dated 06.06.2002 for granting benefit of deem date to the petitioners by conducting enquiry as to how by superseding the claim of petitioners the Junior persons were directly appointed on class-3 category and accordingly grant deem date on which Junior Employees were directly appointed in Class-3 category in Zilla Parishad, Akola in the interest of justice”.

3. At the outset, learned counsel for the petitioners have invited our attention to the communication dated 28th June, 2017 made to the Divisional Commissioner, Amravati Division, Amravati by Deputy CEO, Zilla Parishad, Akola, wherein the CEO has referred the guidelines issued by the concerned Department dated 3rd January, 2017.

4. The learned Divisional Commissioner, Amravati in response to the said communication, by its letter dated 14th September, 2021, without application of mind, observed that the petitioners are not entitled for notional promotion, who were initially appointed on compassionate grounds.

5. The learned counsel for the petitioners submits that the order dated 14th September, 2021 passed by the Divisional Commissioner, Amravati was without giving an opportunity of being heard and, therefore, it is against the principles of natural justice.

6. The learned counsel for the parties *ad idem* that the said order can be set aside by directing the Divisional Commissioner, Amravati Division,

Amravati to give a fresh opportunity of being heard and to decide their representations in accordance with law.

7. Accordingly, communication dated 14th September, 2021 (Annexure XII) is quashed and set aside.

8. The petitioners shall approach the learned Divisional Commissioner, Amravati Division, Amravati on 17th October, 2023 at 11.00 a.m.

9. The learned Divisional Commissioner, Amravati Division, Amravati shall give an opportunity of being heard and thereafter to take appropriate decision within four weeks in accordance with law.

10. The learned Divisional Commissioner, Amravati, is requested to consider the Government Circulars (शासन परिपत्रक, क्रमांक-एसआरव्ही-2002/प्र.क्र. 2/2002/12, मंत्रालय मुंबई-400032) दिनांक 6 जून, 2002 and शासन परिपत्रक क्रमांक :-जिपसे-2016/प्र.क्र.232/आस्था-7, 25-मईबान पथ, बांधकाम भवन, फोर्ट, मुंबई-400001, दिनांक : 03 जानेवारी, 2017, at the time of considering representations of the petitioners.

11. We make it clear that we have not considered the merits of the petition.

12. The petition stands disposed of in the aforesaid terms. There shall be no order as to costs.

(URMILA JOSHI-PHALKE, J.)

(PRITHVIRAJ K. CHAVAN, J.)