

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

WRIT PETITION NO. 7308 OF 2019

Devidas s/o Tulshiram Futane,
 Aged about 62 years,
 Occupation-Retired,
 R/o. Shri Maa Colony,
 Ekvira Nagar,
AMRAVATI-444 607.

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Petitioner

.. Versus ..

1. State of Maharashtra, through its
 Principal Secretary, Higher & Technical
 Education Department,
 Mantralaya, MUMBAI-32.

2. The Joint Director of Technical
 Education, Regional Office,
 Gadge Nagar, AMRAVATI-444 603.

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Respondents

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 Shri Bharat Kulkarni, Advocate for the petitioner,
 Shri S.M. Ghodeswar, Assistant Government Pleader for the respondents.

CORAM : A.S. CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.
DATED : FEBRUARY 02, 2023.

ORAL JUDGMENT (Per : Mrs. Vrushali V. Joshi, J.)

Rule. Rule made returnable forthwith. Heard the learned counsel for the parties.

2. The petitioner, being aggrieved by the order passed by the learned Maharashtra Administrative Tribunal, Nagpur Bench in Original Application No.178/2016 decided on 04.12.2018 and order in Review No.01/2019 decided on 18.03.2019, has filed this petition praying for quashing and setting aside the impugned order of the Tribunal and review and further for direction to the respondent no.2 to grant the benefit of second time bound promotional pay scale from 01.10.2006 in the pay scale of Rs.9300-34800 + Grade Pay of Rs.4200/- instead of Rs.5200-20200 + Grade Pay of Rs.2850, by revising the order dated 15.01.2013.

3. The petitioner was originally appointed in District Dairy Development Office at Amravati by the Regional Dairy Development, Nagpur as Junior Clerk/Time Keeper in equal cadre on 06.04.1981. When the petitioner was working in District Dairy Development Office at Amravati, his post was made surplus and by adjustment under the surplus cell created with the Divisional Commissioner, vide FD's G.R.

dated 10.09.2001 and 26.03.2004, the petitioner was posted to the respondent no.2 by the Divisional Commissioner, Amravati by order dated 24.08.2006 in the office of Government College of Pharmacy, Amravati as Laboratory Assistant. The petitioner joined his duties on 21.09.2006. The petitioner retired from government service on 31.05.2015 from the post of Laboratory Assistant on superannuation from the Government College of Pharmacy, Amravati. This post was not in the similar cadre though the pay scale was identical. In the Milk Scheme the post of Junior Clerk/Time Keeper having promotional channel of Senior Clerk, Head Clerk and above. The post of Laboratory Assistant having no promotional channel. Both the posts were not similar only pay scales were similar, but the promotional channel is not available to Laboratory Assistant. The petitioner is partly aggrieved by the order dated 15.01.2013 of the respondent no.2 granting benefit of second time bound promotion i.e. revise Assured Progression Scheme from 01.10.2006 on completion of 24 years of service in pay scale of Rs.5200-20200+Grade Pay Rs.2850/-, as there is no promotional channel available for next higher scale. However in the milk scheme of parent department, juniors to petitioner were granted second time bound promotion pay scale of Rs.9300-34800+Grade Pay of Rs.4200/- with effect from 01.10.2006, which was required to be protected in view of G.R. dated 26.03.2004.

4. The applicant's first time bound promotion is granted by the Regional Dairy Development, Amravati from 01.10.1994 vide order dated 16.12.1995 in 1200-2040 pay scale of Senior Clerk. Subsequently, this scale is revised in Fifth Pay Commission Rs.4000-6000 and Sixth Pay Commission Rs.5200-20200 + Grade Pay Rs.2400/- of Senior Clerk. The post of the petitioner was declared surplus in the Regional Dairy Development Department, Amravati in view of the Govt. Resolution dated 10.09.2001 and subsequently Surplus Cell has adjusted his post in the same pay scale on the establishment of Joint Director Technical Amravati, but not on the same post or cadre of Junior Clerk for which promotional channel is Senior Clerk and Head Clerk is available. No option was asked for by the Divisional Commissioner and one sided decision was taken to allot the department for posting adjustment which deprived the right of natural justice of petitioner as well as violated the provision of para 6 and 9 schedule (3) of G.R. dated 10.09.2001. Seniority is maintained as it is from entry point of Regional Dairy Development Amravati dated 06.04.1981 as Junior Clerk. Therefore, the applicant is entitled for grant of second benefit at par to those sanction by the Regional Dairy Development Amravati to his juniors vide order dated 11.04.2011 in the pay scale of Rs.9300-34800 + Grade Pay of Rs.4200/-. Therefore, the petitioner being aggrieved made the

representation dated 31.07.2012. The applicant requested for repatriation in his parent department when post was available in 2008. The respondent no.2 has given no objection and submitted to Divisional Commissioner for appropriate order, but no action is taken by the Divisional Commissioner, Amravati which resulted into huge monetary loss to the petitioner. Considering benefit to the petitioner at par to those given to his juniors by the Regional Dairy Development Department vide order dated 11.04.2011, but the respondent no.2 has not taken cognizance of the representation and issued impugned order. Therefore, he has filed Original Application before the Maharashtra Administrative Tribunal which was dismissed. Thereafter, he has filed the Review Petition, which was also dismissed on 18.03.2019 and, therefore, he has filed this petition before this Court.

5. The learned counsel for the petitioner has urged that the first time bound promotion is granted by the parent department of Regional Dairy Development Amravati from 01.10.1994 vide order dated 16.12.1995 in 1200-2040 pay scale of Senior Clerk. Subsequently, this scale is revised in Fifth Pay Commission Rs.4000-6000 and Sixth Pay Commission Rs.5200-20200 + Grade Pay Rs.2400/- of Senior Clerk. Juniors granted second time bound promotional scale vide order dated 11.04.2011 which is grade of Head Clerk Rs.9300-34800 + Grade Pay

Rs.4200/-, whereas the petitioner granted Rs.5200-20200 + Grade Pay Rs.2850/-. The post declared surplus are adjusted against the vacancy in other offices in the division with certain conditions i.e. (i) protection of pay scale (ii) similar recruitment rules of cadre etc. In the adjustment of the petitioner into the Government College of Pharmacy, Amravati as Laboratory Assistant, no above conditions are fulfilled. This post was not in the similar cadre though the pay scale was identical. In the Milk Scheme the post of Junior Clerk having promotional channel of Senior Clerk, Head Clerk and above under Regional Dairy Development Amravati. The post of Laboratory Assistant having no promotional channel, therefore, the Divisional Commissioner has erred and violated the provision in para 9 (4) of Schedule (3) of Govt. Resolution dated 10.09.2001, as the Recruitment Rules of both posts are not similar, only pay scale was similar.

6. The respondents appeared and filed their say submitting that once the petitioner accepted and joined the post of Laboratory Assistant, his relations with the Dairy Development Office came to an end. Now he cannot equate him with the Clerks Junior to him, serving on the establishment of Dairy Development Office. The petitioner himself accepted the post of Laboratory Assistant, it was voluntary act, he was not forced to accept the post. The petitioner was aware of the fact that the

post of Laboratory Assistant was not having promotional channel with this knowledge he has accepted the post, therefore, principle of estoppel operates. In absence of promotional channel, the petitioner cannot directly claim pay scale admissible to the post of Head Clerk. The petitioner has not produced on record the Government Resolution which says that the employee is entitled to claim promotional post which was available to the post before his absorption and in absence of such Government directions, the respondent no.2 refused the prayer of the petitioner to grant him pay scale admissible to the post of Head Clerk. As the claim of the petitioner is not supported by any Govt. Resolution merely because in the past, the petitioner was employee of the Dairy Development Department, he cannot claim the pay scale admissible to the post of Head Clerk and prayed to dismiss the petition.

7. We have considered the arguments of both the parties. The issue involved in this petition is, whether the employee of the State Government, who is rendered surplus and later absorbed in another department, is entitled to the consideration of the service rendered in the parent department for the purposes of the determination of the seniority. The petitioner has relied on the judgment passed by this Court in Writ Petition No.2952/2012 [Shri R.M. Lonare and others .vs. State of Maharashtra and others] along with other petitions.

8. The petitioner has filed Original Application before the Maharashtra Administrative Tribunal which was rejected and then filed a review application. The Tribunal has rejected the application filed by the petitioner observing that the applicant has accepted the post of Laboratory Assistant and to that post there was no promotional avenue, the applicant was not forced or compelled to accept the post of Laboratory Assistant. The applicant remained silent till his retirement and after his retirement, he raised the issue that had the applicant served in the Dairy Development Department, he would have promoted on the post of Head Clerk. The employees junior to him in the Dairy Development Department were receiving the salary of the Head Clerk, therefore, injustice is caused to him. Original Application was mainly rejected on the ground that the promotional avenue was not available to the post of Laboratory Assistant in the Government College of Pharmacy, therefore, the applicant was not entitled to second Assure Progression Scheme, he had no right to claim the salary admissible to the post of Head Clerk. When the benefit of first A.C.P. was given to the applicant pay scale admissible to the post of Senior Clerk was given to the applicant as the promotional avenue was available. When the applicant was absorbed on the post of Laboratory Assistant, his salary in the pay scale admissible to the post of Senior Clerk was protected. As the post of the

applicant was declared surplus, therefore, concession was given to him by the Government, otherwise the applicant had to face great difficulty of unemployment and hence the Maharashtra Administrative Tribunal has rejected original application and the review application also.

9. The applicant is a permanent employee, who was rendered excess in the parent department and later was absorbed in Pharmacy College as Laboratory Assistant. A similar issue was considered in **R. M. Lonare and Others** (*supra*) and it was observed that the Government of Maharashtra constituted "Surplus Cell" pursuant to Government Resolution dated 1.11.1999 to undertake extensive review of the posts which were rendered surplus. The stated intent was to abolish the surplus posts and to absorb the employees working in such posts in some other department. The absorption of such employees was to be regulated by Government Resolution dated 10.09.2001 which provided that such surplus employees, who are absorbed in another department, shall not lose their seniority and their service shall be reckoned from the initial date of their appointment order. Clause 20 of Government Resolution dated 10.09.2001 reads as follows :

“सेवा ज्येष्ठता - अशा प्रकारे सामावून घेतलेल्या अतिरिक्त ठरलेल्या व्यक्तीची समतुल्य/समकक्ष पदावर नियुक्ती झाल्यानंतर त्याची सेवा ज्येष्ठता तो ज्या संवर्गात अतिरिक्त ठरला त्या संवर्गातील नियमित नियुक्तीच्या दिनांकापासून नियमित करण्यात यावी”

10. Clause 20 of Government Resolution dated 10.09.2001 was modified by Government Resolution dated 26.03.2004, reads as follows :

“सेवाज्येष्ठता : अशाप्रकारे अतिरिक्त ठरल्यामुळे सामावून घेतलेल्या शासकीय कर्मचारी अथवा अधिकारी यांची इतर शासकीय विभागात अथवा शासकीय कार्यालयात समतुल्य/समकक्ष पदावर नियुक्ती झाल्यानंतर, अशा समायाजित करण्यात आलेल्या अतिरिक्त कर्मचारी अथवा अतिरिक्त अधिकारी यांची सेवाज्येष्ठता शासन अधिसूचना, सामान्य प्रशासन विभाग, क्रमांक - एसआरव्ही-१०७६/बारा, दिनांक २१ जून १९८३ च्या नियम ४(१) मधील तरतूदीनुसार, असा अतिरिक्त शासकीय कर्मचारी अथवा अधिकारी ज्या पदावर अथवा ज्या संवर्गामध्ये सामावून घेतला जाईल त्या पदावरील अथवा त्या संवर्गातील त्याच्या नियमित नियुक्तीच्या दिनांकापासून निश्चित करण्यात यावी”.

11. It has been further held that the first part of the modified clause stipulated that the seniority of the absorbed employees, who are rendered surplus, shall be determined in accordance with Rule 4 (1) of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 and the latter part provides that the seniority shall be determined with effect from the date of absorption in the new department. The seniority of the original applicant was as a fact determined giving weightage to the service rendered in the parent department. The Tribunal erred in considering the seniority list at the par of said department. Though the applicant has

challenged the seniority and right after his retirement, as per the Government Resolution, the applicant is entitled the seniority in the parent department. We thus find that in view of the decision in **R. M. Lonare and Others** (*supra*), the petitioner is entitled to similar relief.

12. Considering the Government Resolutions and the amended portion of Government Resolution in Clause 20, the petitioner is entitled for the benefits of second time bound promotional pay scale from 1.10.2006. Hence, we pass the following order :

ORDER

- (i) The writ petition is allowed in terms of prayer clauses (i) to (iii).
- (ii) The consequential benefits be paid to the petitioner in terms of this judgment within a period of three months.
- (iii) Rule is made absolute with no order as to costs.

[MRS. VRUSHALI V. JOSHI, J.]

[A.S. CHANDURKAR, J.]

Gulande