

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.368 OF 2024

Prakash Motiram Teli	.. Petitioner
Vs.	
The Deputy Director, Health Services, Kolhapur Circle, Kolhapur	.. Respondent

Mr. Omkar Kulkarni for the Petitioner.
Mr. N.C. Walimbe, Addl. G.P., with Ms. Kavita N. Solunke, AGP, for the Respondent-State of Maharashtra.

**CORAM : A.S. CHANDURKAR &
JITENDRA JAIN, JJ**

DATE : 12TH MARCH, 2024.

ORAL JUDGMENT : (Per A.S. Chandurkar, J.)

1. RULE. Rule made returnable forthwith and heard learned counsel for the parties.

2. The challenge raised in this writ petition is to the order passed by the Maharashtra Administrative Tribunal dated 30th March 2023 in Original Application No.225 of 2020, thereby dismissing the said Original Application. The petitioner in the said proceedings had challenged the communication dated 30th July 2013 by which the benefit that was granted to the petitioner under the “Time Bound Promotion Scheme” came to be withdrawn. The petitioner also challenged the order dated 22nd

October 2019 by which his claim for “Deemed Date of Promotion” came to be rejected.

3. It is not in dispute that the petitioner came to be appointed on the post of Laboratory Assistant – Group “C” on 21st November 1994. He was granted benefit under the Time Bound Promotion Scheme (*TBP*) pursuant to the Government Resolution dated 8th June 1995 from 21st November 2006. The petitioner was temporarily promoted on the post of Laboratory Technician on 26th March 2013. The petitioner could not join on the said post immediately and on 18th June 2013, he accepted the order of temporary promotion. However, on 28th June 2013, he made an application stating therein that for domestic reasons, he was not able to discharge duties on the promotional post. Hence, he proceeded to refuse the temporary promotion. The services of the petitioner were accordingly reverted to the post of Laboratory Assistant by the order dated 30th July 2013. The petitioner was thereafter regularly promoted to the post of Laboratory Technician on 10th April 2019. In the interregnum, the petitioner had made a representation seeking restoration of the benefits that he had received under the TBP Scheme. In addition, he sought grant of Deemed Date of Promotion as per Government Resolution dated 12th September 2016. For these reliefs, the petitioner approached the Maharashtra Administrative Tribunal.

4. The learned Member of the Tribunal proceeded to hold that though the order of promotion dated 26th March 2013 was temporary in nature, it was a practice to issue such orders of temporary promotion and regularizing the same at a later point of time. It further held that in terms of the Government Resolution dated 12th September 2016, the refusal to restore the benefits already granted was proper and the same did not call for any interference. The Original Application, therefore, came to be rejected.

5. We have heard the learned counsel for the petitioner as well as the learned Additional Government Pleader for the respondent. We have also perused the documents on record as well as the affidavit-in-reply filed by the respondent. We find that the order dated 22nd October 2019 passed by the Deputy Director, Health Services, Kolhapur Circle refusing to grant the benefit of Deemed Date of Promotion and refusing to interfere with the withdrawal of the benefits under the TBP Scheme is in view of the Government Resolution dated 12th September 2016. Perusal of this Government Resolution indicates that the same was to apply to the Select Lists that were prepared for the years 2016-2017. This Government Resolution, therefore, has prospective operation. Since the petitioner received benefits under the TBP Scheme prior to issuance of this Government Resolution, we find that the petitioner's representation

seeking benefit of Deemed Date of Promotion and restoration of benefits under the TBP Scheme could not have been refused by relying upon this Government Resolution. The rights of the petitioner would be governed by the policy and guidelines that were prevailing at the relevant point of time.

6. We also find that the order dated 26th March 2013 specifically states that promotion was to be granted temporarily to the petitioner subject to his satisfying further conditions of obtaining a requisite training certificate within a period of one year. This would indicate that unless the petitioner acquired the said eligibility, he was not liable to be promoted on a regular basis. Within a short period of his temporary promotion, the petitioner proceeded to refuse the same. This would indicate that till 28th June 2013, when he applied for withdrawal of the benefits of temporary promotion, the same had not crystallized into a regular promotion. We, therefore, find that the Tribunal was not justified in proceeding on the basis that though the petitioner was promoted temporarily, it was required to be treated as a regular promotion. The finding recorded to that effect is, therefore, found unsustainable.

7. In our view, since the impugned communication dated 22nd October 2019 has been issued only by relying upon the Government Resolution dated 12th September 2016, which has prospective operation, a re-

consideration of the petitioner's request for restoration of benefits under the TBP Scheme as well as the prayer for grant of Deemed Date of Promotion deserves to be re-considered by the respondent.

8. Hence, for aforesaid reasons, the following order is passed :-

- (i) The order dated 30th March 2023 passed by the learned Member, Maharashtra Administrative Tribunal in Original Application No.225 of 2020 is set aside.
- (ii) Similarly, the impugned communication dated 22nd October 2019 issued by the Deputy Director, Health Services, Kolhapur Circle, Kolhapur rejecting the petitioner's claim for grant of Deemed Date of Promotion as well as the action of withdrawing the benefits that have accrued in favour of the petitioner pursuant to his temporary promotion on 26th March 2013 is also set aside.
- (iii) It is directed that the said Authority – the respondent shall re-consider the matter and take a fresh decision on the petitioner's representation dated 28th May 2019 as well as his request for not withdrawing the benefits received under the Time Bound Promotion Scheme.
- (iv) The entire exercise be completed within a period of three months from today.

9. Rule is made absolute in the aforesaid terms.

[JITENDRA JAIN, J.]

[A.S. CHANDURKAR, J.]