



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

WRIT PETITION NO.3910 OF 2021

Ravindra S/o Tukaram Sontakke .Vs. State of Mah., through its Secretary, Rural
Development Department, Mantralaya, Mumbai and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri A.S. Deshpande, Advocate for petitioner.

Shri B.M. Lonare, A.G.P. for respondent Nos.1 and 3/State.

Ms Meghna Munshi, Advocate for respondent No.2

Shri A.R. Prasad, Advocate for respondent No.4

CORAM : ANIL S. KILOR, J.

DATED : 05/02/2024

1. Heard.

2. In this writ petition, the only issue involved is whether the petitioner is rightly denied the promotion on the ground that, he is not completed three years service on the post of Senior Assistant (Accounts) in Zilla Parishad, Buldhana, by ignoring the earlier service on the said post rendered by the petitioner.

3. After going through the record, following facts emerge admitted facts:

a) The petitioner was appointed on 07.10.2006 as Senior Assistant (Accounts).

- b) The respondent No.2 was appointed as Junior Assistant (Accounts) on 22.08.2006 and thereafter, in the same year, he was transferred from Zilla Parishad, Nagpur to Zilla Parishad, Buldhana.
- c) The petitioner completed age of 45 years on 14.10.2007 and therefore, he was granted exemption from appearing in departmental examination for promotion.
- d) The petitioner was transferred to Zilla Parishad, Buldhana on 31.03.2013 and joined on 01.08.2013.
- e) In a seniority list on 01.01.2014, the petitioner was shown at Serial No.25 whereas, the respondent No.4 was shown at Serial No.29.
- f) In a proceeding filed by the respondent No.4 for deemed date of promotion, he succeeded and he was granted deemed date of promotion from 29.07.2011.
- g) The process for promotion had undertaken on 02.02.2015.

4. From the above referred admitted facts, it is evident that, on the date when the petitioner and the respondent No.4 were considered for promotion, the petitioner had not completed three years of service on the post of Senior Assistant (Accounts) in Zilla Parishad, Buldhana. Whereas, the respondent No.4 had completed

said period of three years because of deemed date given to him w.e.f. 29.07.2011.

5. The Divisional Commissioner in his order has categorically observed that, on transfer of any employee from one Zila Parishad to another Zilla Parishad, the seniority becomes zero and in that view of the matter, the earlier service of the petitioner from 07.10.2006 till transfer to Zilla Parishad, Buldhana i.e. till 31.03.2013, was rightly not considered.

6. Shri Deshpande, learned counsel for the petitioner has placed reliance on sub rule (8) of Rule 6 of the Maharashtra Zilla Parishads District Services (Recruitment) Rules, 1967 (hereinafter referred to as “the Rules of 1967”), in support of his submission, he submits that, earlier services cannot be ignored and that has to be counted. He has further placed reliance on a judgment of the Hon’ble Supreme Court of India in the case of *R. Prabha Devi and others ..vs.. Govt. of India and others*, reported in **AIR 1988 SC 902** and in the case of *Coal India Ltd and another ..vs.. Navin Kumar Singh*, reported in **AIR 2018 SC 4753**.

7. Shri Lonare, learned A.G.P., Ms Munshi and Shri Prasad, learned counsel for the respondents support the

order passed by the Divisional Commissioner and prays for dismissal of the present writ petition.

8. Thus, in the above referred backdrop, it would be appropriate and beneficial to refer to sub-rule (8) of Rule 6 of the Rules of 1967, which read thus:

“(8) Notwithstanding anything contained in these rules, the Chief Executive Officer may on an application made by any member of a District Service of another Zilla Parishad, appoint such member to a post in the District Service in which he held such post under that Zilla Parishad on such terms and conditions as may be mutually agreed upon between the two Zilla Parishads and subject to the following further conditions, namely :-

(i) Such appointment shall not be made to posts to be filled in exclusively by promotion and that they shall be made in vacancies which are reserved for appointment by nomination.

(ii) On such appointment on mutual exchange the person appointed shall retain his seniority of the former Zilla Parishads or take the seniority of the Zilla Parishad servant with whom he has been exchanged, whichever of the two shall be lower.

(iii) On such appointment on his request the person appointed shall have his seniority in the cadre from the date of such appointment in the latter Zilla Parishad.”

9. From the above referred provision, it is evident that, the Chief Executive officer may on an application made by any member of a District Service or service of another Zilla Parishad, appoint such member to a post in the District Service in which he held such post under that

Zilla Parishad on such terms and conditions as may be mutually agreed upon between the two Zilla Parishads and subject to the conditions enumerated in sub-rule (8)(i) to 8(iii) of Rule 6 of the Rules of 1967.

10. In the matter at hand no mutually agreed terms for such transfers, between the two Zilla Parishads, are brought on record.

11. On the contrary, the petitioner had given an undertaking that, he will not claim seniority on transfer to Zilla Parishad, Buldhana.

12. Shri Deshpande, learned counsel for the petitioner has placed reliance on sub-clause (3) of sub-rule (8) of Rule 6 of the Rules of 1967, which says that, on such appointment on his request the person appointed shall have his seniority in the cadre from the date of such appointment in the latter Zilla Parishad.

13. However, this provision clearly shows that, the seniority has to be counted from the date of joining the Zilla Parishad on such transfer.

14. Thus, in the present matter, the Divisional Commissioner has rightly considered the date of transfer of

the petitioner as 31.03.2013, while considering his eligibility for promotion and held that, on the date of considering his name for promotion, he had not completed three years service which is the pre-requirement for promotion.

15. In the matter at hand, since the services of the petitioner are govern by the Zilla Parishad Act and Rules and there is a specific provisions which deals with the transfer and the seniority of such transferred employees, the judgments cited by the learned counsel for the petitioner are distinguishable on facts and as the same do not deal with the issue involved in the present writ petition, in both the judgments cited by the learned counsel for the petitioner, are of no assistance to the petitioner.

16. In the circumstances, as there is no error committed by the Divisional Commissioner in passing the impugned order, the writ petition is **dismissed**.

JUDGE