



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

WRIT PETITION NO. 675 OF 2016

Vishnupanth s/o Onkarsa Naghate,
Aged about 68 years, Occ. - Retired,
R/o Plot No.32, Shirbhate Layout,
Bangar Nagar, Yavatmal, Tahsil and
District Yavatmal.

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PETITIONER

VERSUS

- 1) State of Maharashtra,
through its secretary,
Public Works Department, Mantralaya,
Mumbai -32.
- 2) The Superintending Engineer and
Coordination Superintending Engineer,
Public Works Circle, Amravati, Tahsil
and District Amravati.
- 3) The Superintending Engineer,
Public Works Circle, Yavatmal,
Tahsil and District Yavatmal.
- 4) The Superintending Engineer and
Coordination Superintending Engineer,
Public Works Circle, Nagpur.

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RESPONDENTS

Shri S.C. Deshmukh, Counsel for the petitioner,
Ms. D.V. Sapkal, AGP for respondent Nos.1 to 4.

CORAM : NITIN W. SAMBRE &
ABHAY J. MANTRI, JJ.

DATE OF RESERVING THE JUDGMENT : 30th JANUARY, 2024

DATE OF PRONOUNCEMENT OF THE JUDGMENT : 26th MARCH, 2024

JUDGMENT : (Per : Abhay J. Mantri, J.)

The petitioner being aggrieved by the order dated 28-04-2015 passed by the Maharashtra Administrative Tribunal, Nagpur (hereinafter referred to as the "*Tribunal*") in Original Application No. 473/2005, whereby the application filed by the petitioner for grant of deemed date of promotion from the date of passing of the professional examination i.e. 18-03-1986 was dismissed, has preferred this petition.

2. Succinctly, the facts of the case are as under:

(a) On 20-04-1966 the petitioner was appointed as Muster Clerk with the respondents. Then he passed the second year Diploma in Civil Engineering and was promoted to Sub-Overseer on 09-01-1980. In November 1985 the petitioner appeared for the professional examination. The result of the said examination was declared on 18-03-1986. The petitioner had cleared the said examination. On 01-10-1990 he was promoted to Junior Engineer and retired on 31-08-2005.

(b) On 09-09-1998 the petitioner made an application/representation to respondent No.3 requesting him to grant the deemed date of promotion from the date of passing of the professional examination. On 19-09-1998 respondent No.3 forwarded the said

representation to respondent No.2 whereby he recommended respondent No.2 to grant the benefit of deemed date of promotion from the date of passing of the professional examination. But, it was not considered by respondent No.2.

(c) It is contended that on 28-01-2005 respondent No.4 granted the deemed date of promotion to many employees and therefore, the petitioner urged that he may be granted the same, but in vain. That being so, the petitioner was constrained to approach the Tribunal on 04-10-2005.

(d) The Tribunal after considering the Government Resolutions dated 16-09-1964 and 25-11-1965 held that the petitioner is not entitled to the relief as claimed and dismissed the original application on 28-4-2015.

3. Shri S.C. Deshmukh, learned Advocate for the petitioner vehemently argued that the Tribunal has erred in holding that the application is barred by limitation when admittedly the respondents have not raised the ground in respect of the limitation in their reply. Non-raising the objection of limitation itself shows that the respondents have waived the same. However, without considering the said fact and the fact that the claim raised by the petitioner is a continuous cause of action, therefore, the finding given by the Tribunal that the application is hopelessly barred by limitation is illegal and liable to be set aside.

4. Secondly, he emphasized that the Tribunal misinterpreted the claim sought by the petitioner while interpreting the Government Resolutions and erred in holding that in pursuance of the Government Resolutions, the petitioner is not entitled to the relief as claimed. The Tribunal has not taken into consideration the Government Resolutions in its proper perspective as well as the fact that respondent No.4 and other authorities have granted the deemed date of promotion to many employees.

5. To buttress his contention, he has submitted that the present case is covered by the judgment in Writ Petition No.1683/2021 decided by the Coordinate Bench of this Court on 05-7-2022 (*The State of Maharashtra v. Asman Dhondiram Garje and others*). Therefore, he has urged that in view of the dictum laid down in the said case, the petitioner is entitled to the relief as claimed. Hence, he prayed for setting aside the order impugned.

6. *Per contra*, Ms. D.V. Sapkal, learned Assistant Government Pleader has resisted the petition on the ground that the application was hopelessly barred by limitation and therefore, the petitioner is not entitled to the relief as claimed. It is further claimed that as per the Government Resolution dated 25-11-1965, the seniority of the employees/persons should be fixed according to the date of entry to

that cadre. The petitioner had joined the post of Junior Engineer on 01-10-1990 and therefore, the petitioner is not entitled to claim the deemed date of promotion with effect from 18-3-1986. Therefore, she submitted that the order impugned passed by the Tribunal is just and proper and no interference is called for.

7. We have appreciated the submissions of the learned Advocate for the petitioner and the learned Assistant Government Pleader for the respondents. Perused the order impugned, Government Resolutions, and the judgment in Writ Petition No.1683/2021.

8. It seems that the petitioner based on Government Resolutions dated 16-9-1964, 07-6-1965, and 25-11-1965 is claiming that he is entitled to the relief of the deemed date of promotion from the date of passing of the professional examination and consequential relief accordingly. However, the Tribunal has dismissed his claim on three grounds:

- (i) The application is barred by limitation,
- (ii) In view of the modified Government Resolution dated 25-11-1965 the petitioner was not eligible to claim the relief, and
- (iii) The petitioner failed to make out the case that he was treated more discriminately than the other employees to

whom relief was granted and therefore, held that the petitioner is not entitled to the relief as claimed.

9. In view of the above, to ascertain the real facts as to whether the petitioner is entitled to the relief as claimed, it is necessary to go through the record and Government Resolutions. A perusal of the reply filed by respondents Nos.2 and 3 before the Tribunal, it is evident that they both had not raised the objection that the application filed before the Tribunal is barred by limitation. They had only raised the objection that as per the Government Resolution, the seniority of the person should be granted according to their date of joining of that cadre and contended that the petitioner joined as Junior Engineer on 01-10-1990 and therefore, he is not entitled to claim the deemed date of promotion from the date of passing of the professional examination. Respondent No.3 in addition to that submitted that he is not the competent authority to grant the promotion or deemed date of promotion as sought and therefore, he had forwarded the application to respondent No.2 for consideration, being the competent authority. The filing of the submissions by the respondents does not show that they had a grievance about the filing of the application belatedly. Thus, the Tribunal erred in dealing with the question of limitation *suo motu*.

10. The Tribunal based on pleading *suo motu* observed that the cause of action to file the original application arose in 1990 whereas the same had been filed on 04-10-2005 without giving any explanation as to how the application is within limitation. It is further observed that for the first time on 09-09-1998, the petitioner made representation claiming the relief. The said representation was also moved after the lapse of eight years and not explaining such a prolonged period application is barred by limitation. However, the Tribunal has not taken into consideration that in view of the dictum laid down by the Hon'ble Apex Court, the cause of action for filing the application is continuous and it cannot be said that it arose in 1990.

Secondly, the Tribunal has not considered the fact that on 09-09-1998 the petitioner made an application/representation with respondent No.3 who had forwarded the said application/representation to respondent No.2 with his recommendation for grant of relief as claimed by the petitioner. However, till the filing of the original application respondent Nos.2 and 3 had not communicated any order on the said representation to the petitioner. The said fact itself shows that his representation was under consideration till the filing of the original application and therefore, it cannot be said that the original application is barred by limitation. Therefore, the finding

recorded by the Tribunal that the application is hopelessly barred by limitation is not just and proper, and the same is liable to be set aside.

11. Moreover, the case in hand is covered by the dictum laid down in the judgment in Writ Petition No.1683/2021, wherein the Coordinate Bench of this Court has dealt with the issue of limitation as well as the question of the deemed date of promotion to the post of Junior Engineer from the date of passing the professional examination. The Tribunal after considering the facts held that the application is maintainable and granted the relief as claimed by the applicants therein. The order of the Tribunal was maintained up to the Hon'ble Apex Court in Special Leave Petition (Civil) Diary No.30054/2023. Therefore, in our opinion, the dictum laid down in the said judgment is squarely applied to the case at hand. Having considered the same, we are of the opinion that the Tribunal has erred in dismissing the original application as barred by limitation, hence, the said finding is liable to be set aside.

12. The second and third grounds for dismissal of the application were that due to modification in the Government Resolutions, it is held that the petitioner is not eligible for the promotional post or failed to make out the case for grant of the relief as claimed. Therefore, to scrutinize the clauses in the said G. R., it is

necessary to reproduce the relevant clauses of the G. Rs. dated 16-9-1964, 07-6-1965, and 25-11-1965.

Clauses 2, 3, and 4 of the G. R. dated 16-9-1964-

“2. Government is further pleased to direct that all Sub Overseers/Surveyors who have completed a total service of 5 years inclusive of service as Technical Assistant, works Inspectors shall be eligible for appearing for the professional Examination qualifying for entry into the Overseers Cadre. The Sub Overseers, Surveyors will get only 3 chances to appear for the professional examination for Overseers at which the concerned Sub Overseers, Surveyors become eligible to appear in the case of those who have already been absorbed as Sub Overseers/Surveyors, the period of 5 years should be counted from the first day of the first professional examination for Overseers to be held thereafter.

3. The seniority of Sub-Overseers who pass the professional examination of Overseers should be fixed in the Overseers cadre according to the date of entry into that cadre upon passing the professional examination.

4. The number of posts in the cadre of Overseers to be filled in by such promotions of Sub-Overseers/Supervisors should be restricted to 10% of the total number of posts in the cadre of Overseers.”

Clause of the G. R. dated 07-06-1965 -

“In the modification of orders issued in para (1) of Government Resolution, Irrigation and Power Department No.PER-1064/106986-B (2) dated the 23rd November, 1964, the Government is pleased to direct that the professional Examination for Overseers for any year should held any time between October and December according to the Local condition convenience. The result of such examinations should be declared in the month of January of the following year and successful Sub-Overseers/Surveyors should be absorbed in the cadre of Overseers with effect from the 1st of February of the year in which the result is declared, subject to the condition/laid down in Government Resolution, Irrigation and Power Department No.PER-1062/13808-E(2) Dt. the 16th

September, 1964.”

Clauses 1 and 2 in the G. R. dated 25-11-1965-

“1. In a modification of the orders contained in Government Resolutions, Irrigation & Power Department No.PER.1062/ 13808-E(2), dated the 16th September 1964, the Government is pleased to direct that the number of posts in the cadre of Overseers to be filled in by promotion of Sub Overseers and Surveyors on their passing the Professional Examination of Overseers, should be 25% of the total number of posts in the cadre of Overseers.

2. The seniority of such persons in the Overseers cadre should be fixed according to their dates of entry into that cadre.”

13. On conjoint reading of all three Government Resolutions reveals that the seniority of the Sub-Overseer who has passed the professional examination of Overseer should be fixed in the overseer cadre from the date of entry into the said cadre. The aforesaid Government Resolutions clearly reflect that successful Sub-Overseer should be absorbed in the cadre of Overseers with effect from the First February of the year in which the result of the professional examination was declared.

14. It is pertinent to note that the petitioner is not seeking seniority in the cadre of the overseer but he is only claiming that from the date of passing the professional examination, he is entitled to the deemed date of promotion in the said cadre as contemplated in the Government Resolutions. However, the Tribunal made a mistake in misreading the clauses of the Government Resolutions and thereby

erred in holding that the petitioner is not entitled to the relief as claimed. In fact, as per the modified Government Resolution dated 25-11-1965, the seniority in the Overseer cadre shall be fixed from the date of entry into the cadre. Thus, the Tribunal has erred in misconstruing the relief as claimed by the petitioner. In the true sense, the petitioner is not claiming seniority in the cadre but he is only claiming that as per the Government Resolutions, he is entitled to the deemed date of promotion in the said cadre from the date of passing the examination. Therefore, the finding recorded by the Tribunal cannot be sustained in the eyes of the law.

15. *Besides*, the Coordinate Bench of this Court in Writ Petition No. 1683/2021 has discussed the said point in detail and held that the petitioners therein are entitled to claim the relief of the deemed date of promotion from the date of passing the professional examination. Therefore, the dictum laid down in the said case is squarely applicable to the case at hand. In view of the findings given by the Tribunal, the same is not sustainable in the eye of the law and is liable to be set aside.

It is pertinent to note that the respondents are not disputing the fact that the petitioner joined the service as a Sub-Overseer on 09-01-1980. He appeared for the examination in 1985 and the result of the said examination was declared on 18-03-1986. The petitioner

has also produced a copy of the mark-sheet of passing the professional examination wherein the date of passing is mentioned as 13-2-1986. *Furthermore*, the respondents are not disputing the filing of the representation by the petitioner on 09-09-1998, and the same was forwarded on 19-01-1998 by respondent No.3 to respondent No.2 with a recommendation for grant of relief as prayed by the petitioner. However, till the filing of the Original Application, the respondents had not communicated anything about granting or refusing the claim to the petitioner. Likewise, the office order dated 28-01-2005 passed by respondent No.4 for granting the benefit of the deemed date of promotion to fifty-two employees from the date of passing of the examination is also not disputed by the respondents.

16. To sum up the aforesaid discussion, it emerges that based on the Government Resolutions the petitioner is entitled to claim the relief of the deemed date of promotion from the date of passing the professional examination i.e. 18-03-1986. In addition, the question of limitation does not arise as observed in Writ Petition No.1683/2021. Thus, in our view, the dismissal of the application by the Tribunal is contrary to the law laid down by this Court as well as the clauses of the Government resolutions and facts on record. Based on said finding impugned order cannot be sustained in the eyes of law. That being so, we are of the view that the petitioner is entitled to the relief as claimed.

17. In the result, we pass the following order :
- (i) The impugned order dated 28-04-2015 passed by the Tribunal in Original Application No.473/2005 is hereby quashed and set aside.
 - (ii) It is hereby declared that the petitioner is entitled to the deemed date of promotion from the date of passing of the professional examination i.e. from 18-03-1986 or 13-02-1986 on which date the result of the examination was declared.
 - (iii) As a sequel of the above, the respondents are directed to grant the deemed date of promotion to the petitioner along with other consequential relief including the pensionary benefits arising thereof.
18. Rule is made absolute in the aforesaid terms. No costs.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

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