



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

WRIT PETITION NO.6838/2024

(Zilla Parishad, Chandrapur Vs. Shri Narayan Gosai Matte and others)

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

Court's or Judge's orders

Mr. Pavan Raulkar, Advocate for the petitioner.
Mr. K.J. Khanorkar, Advocate for respondent No.1.
Mr. N.R. Patil, Assistant Government Pleader for respondent Nos.2 and 3.

CORAM: NITIN W. SAMBRE & MRS.VRUSHALI V. JOSHI, JJ.

DATED: 28.11.2024.

Heard.

2. The Zilla Parishad, Chandrapur has taken out this petition questioning the order dated 1.8.2023 passed in Original Application (O.A.) No.92/2022 and the order dated 4.3.2024 passed in Review Application No.19/2023 arising out of O.A. No.92/2022.

3. The facts necessary for deciding the present petition are as under:-

The respondent employee is superannuated on the post of Child Development Officer of Zilla Parishad, Chandrapur on 30.11.2004.

Qua superannuation, he was entitled for terminal benefits in the form of leave encashment, arrears of pension, gratuity etc.

The failure to pay the said amount has promoted him to approach before the Tribunal.

The Tribunal accordingly decided the original application preferred by the respondent employee by directing to pay interest at the rate of 6% per annum on the delayed payment of terminal benefits.

Since the learned Advocate for respondent No.4 was not heard, application for review being Review Application No.19/2023 came to

be filed which was also dismissed vide impugned order dated 4.3.2024 and as such this petition.

4. Mr. Raulkar, learned Advocate appearing for the Zilla Parishad, relied on the reply of respondent No.4 submitted before the Tribunal, copy of which was duly served on the petitioner on 20.6.2022, and urged that respondent employee had preferred O.A. No.182/2001 before the Tribunal for grant of deemed date promotion. According to him, said original application remained pending for substantial long time and the State Government has granted deemed date promotion to the respondent employee vide order dated 6.2.2013 w.e.f. 13.2.2001. In such an eventuality, he claims that since original application was pending for considerable period, the petitioner, a statutory body, cannot be penalized by the act of the Court as the petitioner cannot be blamed for pendency of the original application for long time. He relies on the maxim '*Actus Curiae Neminem Gravabit*' meaning that 'an act of the Court shall prejudice no man'.

5. Mr. Raulkar would further claims that granting deemed date promotion by the State Government is duly honoured by the issuance of the order and that being so, the petitioner cannot be penalized by order of payment of interest.

6. As against above, learned Advocate appearing for the respondent employee would urge that the Tribunal has granted the relief of interest for the failure of the petitioner to release the terminal benefits post retirement and based on order dated 6.2.2013 whereby deemed date promotion was granted w.e.f. 13.2.2001.

7. We have appreciated the submissions.

8. Though Mr. Raulkar has claimed that the petitioner was not heard and the Tribunal has committed an error in recording the finding that the petitioner has failed to bring to the notice of the Tribunal the cause for delayed payment, there appears appropriate pleadings to that effect which were before the Tribunal as could be noticed from paragraphs 6 and 7 of the affidavit-in-reply dated 13.4.2022, which read as under:-

“6. It is most submitted that, thereafter, the office of respondent No.02 Divisional Commissioner, Nagpur, in view of the order dated 27.06.2001, again issued the temporary promotion to the applicant on the post of Assistant Project Officer (Control) Zilla Parishad, Chandrapur and accordingly the applicant relieved from the Zilla Parishad, Gadchiroli on 13.07.2001. The copy of order dated 27.06.2001, issued by the office of respondent No.02 Divisional Commissioner, Nagpur, is annexed herewith and marked as Annexure R4-C.

7. It is most submitted that, however, the applicant had not joined on the post of Assistant Project Officer (Control) Zilla Parishad Chandrapur and preferred the Original Application bearing No.182/2011, before this Hon'ble Tribunal for not granting the deemed date promotion and vide order dated 14.11.2001, this Hon'ble Tribunal pleased to allow the application filed by the applicant. Accordingly, the office of respondent No.01, vide order dated 06.02.2013 granted the deemed date of promotion as 13.02.2001.”

9. So far as the order of Tribunal whereby the interest is directed to be paid is concerned, we are required to be sensitive to the fact that O.A. No.182/2001 came to be allowed on 14.11.2011 and the Tribunal while allowing the original application has directed the State Government to grant deemed date promotion to the respondent

employee pursuant to the recommendation of the DPC and said decision was directed to be taken by the State Government as expeditiously as possible and preferably within three months from the date of decision.

10. It appears that though the original application was decided on 14.11.2011 and there was recommendation of the DPC in favour of the respondent employee for deemed date promotion the State Government did not take decision till 6.2.2013 from 14.11.2011.

11. It is the delayed act on the part of the State Government of not only failure to comply with the order passed in O.A. No.182/2001 dated 14.11.2011 of the Maharashtra Administrative Tribunal but also failure of the State Government to confer benefit of the deemed dated promotion inspite of recommendation of DPC prompting the Tribunal to pass an order granting interest.

12. The entitlement of respondent employee to the interest on delayed payment of terminal dues and the differences to be received qua the deemed date of promotion is based on the statutory provisions. That being so, the order of the Tribunal cannot be faulted with as there was a failure to take decision on the part of the State Government. That being so, we see no reason to interfere in the extraordinary writ jurisdiction. The writ petition is disposed of.

(MRS.VRUSHALI V.JOSHI, J.)

(NITIN W. SAMBRE, J.)