



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8283 OF 2017

Ashok s/o Baburao Gaikwad .. Petitioner

versus

The Additional Divisional Commissioner
Aurangabad Division, Aurangabad
& others .. Respondents

Mr. H. V. Patil, Advocate for the Petitioner.
Mr. S. N. Kendre, AGP for the State.
Mr. P. R. Tandale, Advocate for Respondent No. 2.
Mr. R. K. Ashtekar, Advocate for Respondent No. 3.

CORAM : KISHORE C. SANT, J.
RESERVED ON : 2nd DECEMBER, 2025
PRONOUNCED ON : 19th DECEMBER, 2025.

ORDER :

1. This Petition is filed by the Petitioner challenging the judgment and order dated 14.12.2016 passed by the Additional Divisional Commissioner, Aurangabad Division, Aurangabad in Appeal No. DB/Appeal/Cell/100/2015. The learned Additional Divisional Commissioner, by impugned judgment and order confirmed the order dated 18.04.2015 passed by Respondent No. 2/ Chief Executive Officer, Zilla Parishad, Latur. Promotion order of Respondent No. 3 to the post of Assistant Administrative Officer is thereby challenged. However, by efflux of time, the Petitioner so also

the Respondent No. 3 both have retired. A prayer clause, therefore, is now added seeking deemed date of promotion to the post of Assistant Administrative Officer with all consequential benefits including fixation of pay etc.

2. The facts in short as stated in the Petition are that on 19.06.1984, the Petitioner came to be appointed as Junior Assistant with Zilla Parishad. On 12.01.1999, he came to be promoted to the post of Senior Assistant by giving deemed date as 14.07.1988. He was thereafter promoted as Superintendent on 03.04.2000. The said order was challenged by one Suryabhan Pawar claiming that he was entitled to get promotion to the post of Superintendent. His appeal came to be allowed and thus, he was promoted to the post of Superintendent. Petitioner, therefore, filed Appeal before the Additional Commissioner, Auranabad, wherein promotion of Mr. Pawar came to be set aside. The matter was remanded back to the Zilla Parishad. Zilla Parishad reverted the Petitioner by promoting Mr. Pawar. Petitioner, therefore, filed Appeal before the Divisional Commissioner. However, the same came to be rejected on 25.02.2003. The Petitioner approached the State Government by filing revision. Said revision came to be allowed by order dated

10.11.2004. Said decision came to be challenged by Mr. Suryabhan Pawar by filing Writ Petition No. 2746/2005. This Court, again remanded the matter to Zilla Parishad. However, again Mr. Pawar came to be appointed on the post of Superintendent. In the next round again, the order in respect of the Petitioner was reversed. It is thus Petitioner is before this Court. As stated above, now the Petitioner is seeking only deemed date of promotion with consequential benefits. As on today, there is no challenge to the promotion of either Mr. Pawar or present Respondent No. 3.

3. Learned Advocate Mr. Patil vehemently argued that when the Petitioner was appointed as Junior Assistant he was at serial number 164 in the seniority list whereas Mr. Pawar was at serial number 295. After promotion to the post of Senior Assistant, the Petitioner was at serial number 32 whereas Mr. Pawar was at serial number 34. He thus submits that when Mr. Pawar was admittedly junior to the Petitioner as per the record, there was no question of promoting him prior to the Petitioner. The Petitioner was therefore rightly promoted. The authorities including the appellate authorities however, committed mistake by accepting the case of Mr. Pawar and denying promotion to the present Petitioner. He submits that even

date of appointment of present Petitioner is prior to the date of appointment of Mr. Pawar. He thus submits that the Petition deserves to be allowed.

4. Learned Advocate Mr. Tandale for Zilla Parishad vehemently opposes the Petition. He submits that Respondent No. 3 is from open category whereas the present Petitioner belongs to VJNT category. Petitioner was thus appointed against the post reserved for VJNT category. The post on which Respondent No. 3 is promoted was for the open category and thus, Petitioner could not have been considered at all for the said post. He submits that the Chief Executive Officer, Zilla Parishad has thus rightly considered all the aspects and rightly refused promotion to the Petitioner.

5. Learned AGP also supports the impugned order by submitting that the authorities have rightly considered the revision and appeal and have rightly passed the orders.

6. Learned Advocate Mr. Ashtekar for Respondent No. 3, submits that in any case, the Petitioner could not have been promoted on the post reserved for open category. His seniority is to

be counted from the candidates from VJNT category and not from general category. Respondent No. 3 happens to be a person from general category and thus, there is no question of Petitioner claiming the post of Superintendent in place of Respondent No. 3. he also accepts that by now, Respondent No. 3 has also retired and thus, to the extent of this Respondent, the position cannot be reversed.

7. This Court has considered the arguments and the orders. So far as the dates are concerned, there is no dispute. There is also no dispute that the Petitioner belongs to VJNT category. The question is only whether the Petitioner is entitled to get the benefit of deemed date of promotion with consequential benefits. During the course of hearing, it transpires that Mr. Pawar and the Petitioner both belong to VJNT (A) category. It is thus clear that in no case, Respondent No. 3 needs to be disturbed.

8. In the Appeal filed by the Petitioner, Respondent-Zilla Parishad filed a say that the Petitioner though was promoted on 12.01.1999, he was promoted till a candidate from competitive examination is available to the post of Senior Assistant. On 26.04.1999, Mr. Pawar was selected and he was given deemed date as

14.07.1988. He, therefore, happened to be senior to Mr. Pawar and therefore, Mr. Pawar was demoted to the post of Petitioner. Thereafter a person from competitive examination was made available and in that view, the Petitioner was demoted to the post of Junior Assistant by order dated 05.08.2002. Against this order, Appeal was preferred by the Petitioner which came to be dismissed. Thereafter, the Petitioner was promoted again on 29.10.2003. Against this all, a Writ Petition was preferred by the Petitioner in which, this Court directed to demote the Petitioner to the post of Senior Assistant. It was observed in the Writ Petition that as Mr. Pawar has acquired qualification required for the promotional post he was promoted. In Writ Petition No. 2168/2006, the order demoting Mr. Pawar was set aside and thus, he was given retiral benefits of the post of कक्षा अधिकारी. It is the case of the Petitioner that since Mr. Pawar was promoted in view of the order passed in Writ Petition, the same deemed date cannot be given to Mr. Gaikwad as there was only one promotional post available for VJNT category. It is also a say that a departmental enquiry was initiated against the Petitioner in which he was found guilty. By way of punishment, he was demoted to the lower post. Even thereafter, he was given notices for irregularity, negligence in duty etc.

9. This Court, thus, finds that the learned Additional Divisional Commissioner considered all these aspects. The learned Additional Divisional Commissioner has also considered that earlier this Court had passed specific orders in Writ Petition and the Petitioner was demoted by way of punishment.

10. During the course of argument, learned Advocate Mr. Patil has also invited attention of the Court to the stand taken by the Zilla Parishad in the Appeal filed by Mr. Pawar before the Divisional Additional Commissioner, Aurangabad. In the said Appeal, the stand taken by Zilla Parishad was that deemed date to the post of Senior Assistant to Mr. Pawar was 15.07.1988 and the deemed date of Mr. Gaikwad to the said post was 14.07.1988 and thus, in the cadre of Senior Assistant, the present Petitioner is senior to Mr. Pawar. However, the said say was filed in the year 2000 and the said Appeal was partly allowed remanding the matter. At this stage, therefore, it is necessary to see the stand of Zilla Parishad in the present Petition. It is the say of Zilla Parishad that it has acted pursuant to Government Resolution dated 18.10.1997. Said Government Resolution is in respect of percentage of promotional post of each

category wherein only 2% posts are shown reserved for VJNT (A) category.

11. Considering the overall view, this Court does not find that the Petitioner is superseded by Mr. Pawar. However, Petitioner was demoted pursuant to the departmental enquiry. It is by way of punishment. The punishment inflicted upon the Petitioner was never challenged by the Petitioner. When the Petitioner has accepted the punishment, there is no question of giving any deemed date to him. The Petition is, therefore, devoid of merits. No interference is called for in the Petition while exercising powers under Article 227 of the Constitution of India. In the result, Petition stands dismissed.

(KISHORE C. SANT)
Judge

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