



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1987 OF 2020

Devidas Ganpat Pawar,
Age 62 years, Occu. Retired,
R/o CTS No.1642-A, Lane No.6,
Jai Prakash Chowk, Dhule.

... **Petitioner.**

Versus

1. The State of Maharashtra,
Through Principal Secretary,
Industrial, Electricity & Labour
Department, Mumbai,
Mantralaya, Mumbai-32.
2. The Chief Executive Officer,
Maharashtra Rajya Khadi &
Gramudyog Mandal, Mumbai.
3. The Depty Chief Executive Officer,
Maharashtra Rajya Khadi &
Gramudyog Mandal, Mumbai.
4. The Accounts & Audit Officer,
Maharashtra Rajya Khadi &
Gramudyog Mandal, Mumbai.
5. Shankar Manikrao Bodhgire,
Age : Major, Occu. Retired,
R/o Samarth Nagar, Near Ambedkar Nagar,
Nanded. Pin Code 431605.
6. Deleted.
7. Harpalsing Manoharsing Tomar,
Age : Major, Occu. Retired,
R/o Plot No.49, Ekta Nagar,
Besa Road, Near Hanuman Nagar,
Nagpur. Pin Code 440034.

... **Respondents.**

Advocate for Petitioner : Mr. Anudeep D. Sonar.
AGP for Respondent-State : Mr. P. S. Patil.
Advocate for Respondent No.2 : Mr. S. K. Chavan.

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**CORAM : S. G. MEHARE, AND
SHAILESH P. BRAHME, JJ.**

**RESERVED ON : 31.01.2025
PRONOUNCED ON : 14.02.2025**

JUDGMENT : (Per S. G. Mehare, J.) :-

1. Rule. Rule made returnable forthwith and heard finally by consent of the parties.
2. By way of this writ petition, the petitioner is claiming the deemed date promotion with effect from 24.10.2005 to the post of Senior Superintendent and quashing and setting aside the impugned decision/communication dated 20.06.2019. He also claimed the consequential benefits of deemed date promotion with effect from 24.10.2005. The representations of the petitioner dated 27.04.2019 and 27.05.2019 have been rejected for the reasons that the Committee has taken a decision that on 13.10.2005 three posts were available for the promotion and three employees in the ratio of 1 : 1 were held eligible for the deemed promotion. Therefore, the petitioner and other one employee is not entitled to the deemed date promotion.

3. The petitioner has a case in brief that he was appointed on 12.12.1972 as a Secretary with respondent No.2. From time to time, he was promoted as per seniority. On 07.08.2004, the petitioner and three others were posted on the post of Senior Superintendent. However, due to health issues and the diabetes as well as the humid climate of Bombay, the petitioner refused to accept the promotion. Another employee Mr. Sakhre refused the promotion permanently and other two also refused the promotions. On 24.08.2004, it was intimated that the persons who have refused the promotion cannot claim promotion for one year. On 23.03.2005 and 21.07.2005 again the meeting was held for promotion and one D. S. More and N. P. Kathale were selected from open category though the posts were to be filled up from the reserve category and the persons who refused the promotions in 2004 were eligible to promotion but they were not considered. On 13.10.2005, again a meeting for promotion was held. The post of Senior Supervisor was available. However, the other persons were considered though the petitioner and other who refused the promotion in 2004 were eligible and senior to them. On 13.10.2005, one Mr. V. K. Borikar was promoted from 24.10.2005 instead of petitioner. Hence, he claimed the

deemed promotion as of 24.10.2005. On 31.12.2008, the petitioner was retired. He made the number of representations for deemed date promotion, as one Mr. V. K. Borikar was appointed on surplus posts and given wrong promotion in the meeting dated 13.10.2005.

4. Learned counsel for the petitioner would submit that the petitioner has not given the deemed date promotion neither promoted when he became entitled to when the promotion was given to one Bodhgire though he was not entitled to the promotion. He would further argue that the petitioner has been deprived of the promotion from 24.10.2005 though he was eligible. He would submit that the petitioner has been discriminated and deprived of the deemed date promotion. He was pursuing the issue since 2006. He pulled his representations till 24.12.2008. He was addressing the letter to the District Gramodyay Adhikari and he was addressing to the Chief Executive Officer, Maharashtra State, Khadi and Gramodyay Mandal, Mumbai. He would further argue that there was no reason to refuse the deemed date promotion and consequential benefits. He would refer to the various decisions of the Authority and the documents relating to the eligibility of another co-employee.

5. Learned counsel for respondent Nos.2 to 4, who were the contesting respondents, has vehemently opposed the petition. He would submit that the post for which the promotion was sought is a sole post at Bombay. However, the employees do not wish to go there. Hence, they refused the promotion. The petitioner deliberately did not rush to the Court immediately. He tactfully passed the time till he retire and then he came to the Court with a view to get the promotion by avoiding the actual joining at Mumbai. It is not the case that the petitioner was never promoted to the post, but it is the petitioner who has refused it. One of the reasons of his refusal is humid atmosphere at Bombay itself indicates that the petitioner with knowledge did not rush the Court immediately when he was refused the promotion. When he was aggrieved by the process of promotion dated 24.10.2005 for around three years, till he retire, he kept mum. The petition is misconceived, malafide and with ill motive. Hence, he does not deserve deemed date promotion.

6. Admittedly, when the petitioner was promoted on 07.08.2004, he refused the promotion giving certain reasons. By letter dated 24.08.2004, the petitioner was informed that since he refused the promotion his junior would be promoted

and he would not be considered for one year. On 24.03.2005, the next meeting of the promotion committee was held and detailed minutes were recorded about the employees who denied the post of Senior Superintendent which is only at Bombay office. In that resolution, it has been observed that the Accountant Mr. V. K. Borikar at Serial No.11 was shown in the wait list. Thereafter, in an another meeting dated 13.10.2005, again the record was examined and the seniority list was considered and by the resolution one Mr. Borikar was promoted to the post of Senior Accountant, which was equivalent to the Senior Superintendent. The petitioner has claimed that since one year was passed, he should be considered for promotion by representation dated 12.07.2006. He addressed many letters to the Chief Executive Officer, Maharashtra State, Khadi Va Gramudyog Mandal, Mumbai through District Gramudyog Officer. He forwarded his representation to the C.E.O. On 03.08.2006, he learnt that Mr. Borikar was promoted. Hence, he asked for the deemed date promotion from 24.10.2005. He went on simply making the representations. Till his retirement dated 31.12.2008, he just made the representation. Finally, his proposal was kept before the Promotion Committee. The Promotion Committee by impugned letter dated 27.06.2009 informed him that Mr.

Bodhgire, Ravtekar and Tomar were senior to him and one Sakhre. Therefore, in the meeting dated 13.10.2005 they were entitled to the deemed date promotion.

7. A vehement argument has been advanced. However, it has not been established that the petitioner was entitled to a deemed promotion because there were another employees who were senior to him. *Prima facie* it appears that there is delay and laches on the part of the petitioner in knocking the doors of the Court of law for seeking deemed date promotion. Considering the conduct of the petitioner, there appears substance in the arguments of the learned AGP that the petitioner deliberately did not come to the Court in time because he was not intended to go and join the post which is only at Mumbai. While refusing the first promotion, he has assigned the reason that weather of Mumbai is not suited to him. Normally, the seniors are refused the deemed date if they refuse the promotion and they are at fault. The deemed date promotion could be granted on the basis of seniority. If a Government servant is bound to have been deprived on promotional posts without any fault on their part, their claim for deemed date of promotion can be accepted. Learned AGP has placed into service the case of ***Union of India and others***

Vs. C. Girija and others ; 2019 DGLS (SC) 222, wherein the Hon'ble Supreme Court has reproduced the law laid down in the case of *State of Tamilnadu Vs. Seshachalam ; (2007) 10 SCC 137*. It has been held in that case that filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant. The case of *P. S. Sadashivswamy Vs. Tamilnadu 1975 (1) SCC 152* was also referred in which it has been observed that a person aggrieved by an order promoting a junior over his head should approach the Court atleast within six months, or at the most, within a year after such promotion. It is not that there is any period of limitation for force to exercise their powers under Article 226 nor it is that there can never be a case where the Courts cannot interfere in the matter after the passage of certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extra-ordinary powers under Article 226 in the

case of a person who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters.

8. We have observed the conduct of the petitioner and his approach. Instead of approaching the Court at the earliest he kept on making representation only. The impugned decision is apparently taken after his retirement. His conduct clearly indicates that he is interested only in a financial benefits and he was never interested to discharge the duties as a Senior Superintendent because it was only the post at Mumbai office. Hence, for this reason also we do not wish to exercise the powers under Article 226 for delay and laches on the part of the petitioner.

9. For the reasons mentioned above, the writ petition stands dismissed.

10. Rule made discharged. No order as to costs.

(SHAILESH P. BRAHME, J.)

(S. G. MEHARE, J.)

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