



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

Writ Petition No. 5779 of 2023

Ashok S/o Chaituji Vaidya,
Aged about – 63 years, Occ- Retd.
R/o Vishwakarma Nagar, Lane No. 9,
Behind Medical College, Nagpur.

.... Petitioner

// Versus //

Nagpur Municipal Corporation
Nagpur, Civil Lines Nagpur
Through its Commissioner.

.... Respondent

Mr. R. N. Sen, Advocate for the petitioner
Mr. S. N. Bhattad, Advocate for the respondent

CORAM : ANIL L. PANSARE J.

DATED : 03-03-2025

ORAL JUDGMENT :

Heard.

2. Issue Rule, returnable forthwith. Mr. S. N. Bhattad, learned counsel waives service of notice for the respondent. With consent of learned counsels for the parties, the petition is taken up for final hearing.

3. On 13-1-2025, following order was passed.

“Heard for sometime. One of the questions is whether, after reappointment, the petitioner is granted a time-bound promotion in terms of the Government Resolution dated 01.04.2010 at Annexure P-3.

2. The learned counsel for the respondent seeks time to go through the service book to make a statement whether the benefit was granted to the petitioner.

3. The issue whether the petitioner ought to have challenged the finding on limitation also will be considered in due course.

4. List this petition in the week commencing on 27.01.2025.”

4. Learned counsel for the respondent, on instructions, submits that the time bound promotion in terms of Government Resolution dated 1-4-2010 has been not granted to the petitioner after his reappointment.

5. The facts in brief are as follows.

The complaint filed by the petitioner before the Industrial Court, Nagpur was dismissed vide judgment and order dated 21-6-2022 on the count that the petitioner was reappointed after having been compulsorily retired from service on health grounds. The Industrial Court opined that since the petitioner was reappointed, it would amount to fresh service and will be not entitled to time bound promotion. As against, it was the case of the petitioner that the period

from the date of retirement till his reappointment was regularized by treating the absence as extraordinary leave.

6. Upon specific query made by the Court, learned counsel for the respondent submits that as per service record, what has been stated by the petitioner as regards treating his absence as extraordinary leave is correct. The order to that effect has been passed on 2-1-1996 by the respondent. That being so, though the word 'reappointment' is used by the respondent, the fact remains that the petitioner was continued in service. He was compulsorily retired not on certain allegations but on medical grounds and further, his absence was treated as extraordinary leave (leave without pay), meaning thereby, his services were continued. The word 'reappointment' will have to be understood in the light of the medical ailments suffered by the petitioner, which required respondent to pass an order of compulsory retirement. Nonetheless, the period between the order of compulsory retirement and reappointment having been treated as absence, the absence has been condoned as extraordinary leave. The petitioner for the purpose of time bound promotion, therefore, should be treated as in service, which fact has been overlooked by the Industrial Court.

7. The Industrial Court, thus, committed apparent error while appreciating the facts. The judgment and order impugned is liable to be quashed and set aside.

8. The petition is accordingly allowed. The judgment and order dated 21-6-2022 passed by Industrial Court No. 1, Nagpur in Complaint (ULP) No. 191/2014 is quashed and set aside. It is hereby held that the petitioner is entitled for time bound promotion in terms of Government Resolution dated 1-4-2010. The respondent shall extend benefits accordingly within eight weeks from today.

9. Rule is made absolute in aforesaid terms.

(Anil L. Pansare, J.)

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