



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 5248 OF 2024

Santosh S/o Jayram Ghuge,
Aged about 50 years,
Occupation: Service,
R/o Changani Nagar, Amravati,
Tq. District - Amravati.

...PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary for Rural
Development Department, Mantralaya,
Mumbai.
2. The Divisional Commissioner,
Amravati Division, Amravati
3. The Zilla Parishad Amravati,
Though its Chief Executive Officer,
Amravati.
4. Shri. Kishor Gole,
Assistant Block Development
Officer, Panchayat Samittee,
Yavatmal
5. Shri. Vilas Jadhav,
Extension Officer (Education),
Panchayat Samittee Darwa,
District Yavatmal.

...RESPONDENTS

Shri A.B. Patil, Advocate for petitioner
Ms H.N. Jaipurkar, AGP for respondent/State
Shri M.A. Sable, Advocate for respondent No.3

CORAM : **SMT. M.S. JAWALKAR AND**
NANDESH S. DESHPANDE, JJ.

RESERVED ON : **16.03.2026**
PRONOUNCED ON : **01.04.2026**

JUDGMENT (PER : NANDESH S. DESHPANDE, J.)

Rule. Rule is made returnable forthwith. Heard finally with the consent of parties.

2. The present petition prays for a declaration that the act of respondent No.1 State Government, and respondent No.2 Commissioner, Amravati, in not granting promotion to the petitioner to the post of Assistant Block Development Officer, Group – B, is bad and illegal, and further prays for a declaration that the petitioner is eligible to be promoted on the said post. It also prays for quashing and setting aside the promotion order dated 16.11.2022 to the extent it has granted promotion to the respondent No.4. Alternatively, it prays for a direction to the respondent No.1 State Government, and the respondent No.2, Commissioner, Amravati, to grant petitioner a deemed date promotion on the post of Assistant Block Development Officer,

Group - B, with effect from 16.11.2022, with all consequential benefits.

3. The facts as seen from the petition are as under :

i) The petitioner was appointed as a Primary Teacher in Zilla Parishad School, Amravati, and thereafter, on 30.06.2003, was promoted as a Graduate Teacher. On 19.05.2006, the petitioner was promoted to the post of Extension Officer (Education) from NT-D category. In the seniority list published on 01.01.2019, for the post of Extension Officer (Education) the petitioner is at Sr. No.11, and respondent Nos. 4 and 5 are at Sr. Nos. 14 and 15.

ii) On 07.05.2021, a Government Resolution was passed promoting the petitioner to the post of Extension Officer (Education) from NT-D category. The respondent No.2, Commissioner on 24.05.2021, prepared a list of eligible candidates to be promoted to the post of Assistant Block Development Officer from the post of Extension Officer (Education) and forwarded the same to the Zilla Parishad, in which the name of the petitioner was included. Thereafter, the respondent No.1 called for options from the eligible candidates, in which the name of the petitioner was missing, which prompted him to make a representation on

21.10.2022 to the respondent No.2. Thereafter, on 16.11.2022, the order impugned of promoting the respondent Nos. 4 and 5 was passed.

4. This prompted the petitioner to file a writ petition before this Court bearing Writ Petition No. 1659/2023, which was disposed off by this Court on 08.02.2024. This Court directed the respondent No.2 to refer the matter to the DPC to decide the claim of the petitioner, in terms of Clause 3(a) of the Government Resolution dated 07.05.2021.

5. In pursuance to the said order, on 13.02.2024, the petitioner made a detailed representation ventilating his grievances. Thereafter, the procedural formalities were completed, and the respondent No.1 on 05.06.2024 recommended to apply Clause 3(a) of the Government Resolution dated 07.05.2021 to the petitioner's case and to consider him accordingly. However, the promotion was not granted, which has prompted the petitioner to approach this Court.

6. We have heard Shri A.B. Patil, learned Counsel for the petitioner, as also Ms H.N. Jaipurkar, learned Assistant Government Pleader for respondent/State, and Shri M.A. Sable, learned Counsel for respondent No.3.

7. Shri A.B. Patil, learned Counsel for the petitioner, by taking us through the various documents with the petition, submits that the entire edifice of the case of the petitioner is based on the Government Resolution dated 07.05.2021. The said Government Resolution and more particularly Clause 3 spells out the modality and cut-off date for granting promotion. Sub clause (a) of Clause 3 contemplates that those employees who were in service prior to 25.05.2004, their seniority would be calculated as on 25.05.2004 and would be entitled to further promotion accordingly. Sub Clause (b) of the said Clause 3 contemplates that those Government employees who joined services after 25.05.2004 would be entitled to promotion as per their original seniority.

8. He therefore submits that, admittedly, the petitioner No.1 was in service from 25.06.1998, and therefore, Clause (a) of the said Government Resolution would apply. He therefore submits that

the action of the respondents is illegal and arbitrary, and without any justification. He also submits that the stand of the respondents in not granting him promotion on the ground that he has received the benefit of reservation while getting promotion on the post of Extension Officer (Education) is illegal and not in consonance with the spirit of the Government Resolution dated 07.05.2021, and violating fundamental right of the petitioner. He further submits that a harmonious reading of the entire Clause 3, with Clause 2, would make it clear that the aim and object of issuing the Government Resolution was not to deprive promotion to the employee who has once availed or got the benefit of promotion on the post of reservation. It is therefore submitted that the action of the respondents cannot withstand the scrutiny of law and is therefore liable to be set aside.

9. Per contra, the learned Assistant Government Pleader, after taking us through her reply, states that the DPC found that, as per Clause 3(a) of the said Government Resolution, the seniority of the petitioner was determined considering it as on 25.05.2004. She further submits that the petitioner obtained the benefit of reservation for promotion on the post of Extension Officer

(Education) in the MDS cadre Group – B, taking advantage of the seniority list dated 01.01.2004 prepared for the post of Kendra Pramukh. The said list also comprised the name of Shri Pawar at Sr. No. 78 whereas the name of the petitioner is at Sr. No. 97. She further submits that despite such difference in seniority, the petitioner, taking benefit of the reservation, obtained a higher rank and was promoted on the post of Extension Officer. While as on date, Shri Pawar is still working on the post of Kendra Pramukh. She therefore submits that the action of the respondents is perfectly justified.

10. We have considered the contentions canvassed by the learned Counsel for the parties, and with their able assistance, we have gone through the record. It is a matter of record that the petitioner was appointed on 25.06.1998 and was promoted as Kendra Pramukh on 15.07.2003. He was thereafter promoted as an Extension Officer (Education) on 19.05.2006. As can be seen from the said appointment order promoting the petitioner to the post of Extension Officer (Education), it was done after following due procedure and on the recommendation of the DPC. The name of the petitioner is at Sr. No. 11, and the name of respondent Nos. 4

and 5 are at Sr. No. 14 and 15 in the list of seniority of the persons being eligible for promotion. Furthermore, as can be seen from the Government Resolution, the said resolution was issued by the State in the backdrop of Special Leave Petition No. 28306/2017 pending before the Hon'ble Apex Court and was aimed to fill up the posts by promotion by way of seniority. The title of the said Government Resolution, as also Clause 2, makes this position clear. Clause 2 of the said Government Resolution expressly states that the said Government Resolution is issued only because this Court in Writ Petition No. 2797/2015 delivered a judgment on 04.08.2017, thereby declaring the reservation in promotion as unconstitutional. It further states that the Hon'ble Supreme Court has not granted a stay to the said judgment and therefore, the said Government Resolution is being issued. Clause 3 of the said Government Resolution has to be read in the backdrop of the object of the said Government Resolution as stated above.

11. Furthermore, even expressly there is no prohibition or embargo for an employee to avail further promotion only because he has availed one promotion, on the basis of reservation. The said Government Resolution also makes it clear that the promotions

effected by adopting the methodology as per Clause 3, would be subject to the result of the final judgment in SLP No. 28306/2017. Thus, the contention of the respondents that only because the petitioner has taken the benefit of the reservation once, he is not entitled to take the benefit is without any basis.

12. Furthermore, the minutes of meeting, as also the list prepared by the DPC, which is filed along with the reply by the learned Assistant Government Pleader makes this position clear. As can be seen from the said minutes of meeting, the DPC has recorded a finding that when the petitioner was promoted as a Kendra Pramukh, his name was at Sr. No. 97 in the seniority list, and therefore, he has climbed the said seniority list as far as the list of Extension Officer (Education) is concerned. However, the DPC has recorded a finding that only because the petitioner has taken benefit of the reservation, his name appears in a higher position, and therefore, he has lost his seniority. This finding, in our view, is not correct. As stated above, there is no embargo or restriction on the employee taking benefit of a reservation in promotion if he is otherwise entitled. In fact, as stated supra, that was the object of the Government Resolution dated 07.05.2021. At the cost of

repetition, it is relevant to point out that the Government Resolution, in fact, was issued in tune with the judgment of this Court which held that the reservation in promotion is unconstitutional. It therefore follows that the action of the respondent cannot be countenanced. The petition is therefore liable to be allowed. However, looking to the fact that the respondent No. 4 is already promoted vide order dated 16.11.2022, it would be proper not to disturb the said promotion in view of the alternate prayer being granted. It is allowed as such in following terms:

ORDER

- i) The Writ Petition is allowed.
- ii) It is declared that the act of respondent Nos.1 and 2 in not granting the promotion to the petitioner to the post of Assistant Block Development Officer, Group B is bad and illegal, and that the petitioner is eligible to be promoted on the said post.
- iii) It is further directed that the respondent Nos. 1 and 2 should grant a deemed dated promotion to the petitioner on the post of Assistant Block Development Officer, Group – B, from 16.11.2022, and grant him all consequential benefits arising therefrom, within eight weeks from the date of this judgment.

13. The petition is disposed of in the above terms.

14. Rule is made absolute. No order as to costs.

(NANDESH S. DESHPANDE, J.)

(SMT. M.S. JAWALKAR, J.)

Jayashree..