

ORIGINAL APPLICATION NO. 567/2021
(Arifa Gulab Maniyar Vs. State of Maharashtra & Ors.)

CORAM : Justice Shri P.R. Bora, Vice Chairman
AND
Shri Vinay Kargaonkar, Member (A)

DATE : 08.12.2023

ORAL ORDER :

Heard Shri Swaraj S. Tandale, learned counsel for the applicant and Shri M.P. Gude, learned Presenting Officer for the respondent authorities.

2. When the present matter is taken up for hearing, the learned Presenting Officer submits that the matter is pending with the State Government for taking final decision in the matter of departmental enquiry held against the applicant. The learned Presenting Officer, in the circumstances, has sought time. The request so made is opposed by the learned counsel appearing for the applicant.

3. From the facts, which have come on record, it is discernable that the matter is pending with the State Government since last about 02 years. Learned counsel pointed out that the applicant was due for promotion, however, the respondents did not consider her to be promoted on the ground that the

departmental enquiry is pending against her. The departmental enquiry was initiated against the applicant in the year 2016. The learned counsel has brought to our notice that in the meanwhile the juniors to the present applicant have got the promotion. The learned counsel further submitted that even otherwise in the enquiry so held, out of 10 charges, 08 charges are held to be not proved and 02 charges, which have held to have been proved, the applicant has submitted her appropriate explanation showing that the said charges cannot be held to have been proved. Because the final decision has not been taken, the applicant is deprived of her further promotion. Learned counsel brought to our notice the Government Resolution dated 15.12.2017, clause 11 thereof, reads thus :-

“११. विभागीय पदोन्नती समितीच्या पहिल्या बैठकीनंतर दोन वर्षांनी शिस्तभंगविषयक/न्यायालयीन कार्यवाहीच्या अंतिम निर्णयाच्या आधिन संबंधित अधिकारी/कर्मचा-यास तदर्थ पदोन्नती देणे आवश्यक आहे, असे सक्षम प्राधिका-याचे मत झाल्यास मोहोरबंद पाकिट उघडण्यात येवू नये. विभागीय पदोन्नती समितीची बैठक बोलावून संबंधित अधिकारी/कर्मचा-याची पात्रता/अपात्रता नव्याने तसासावी. पुन्हा नव्याने पात्रता तपासल्यानंतर संबंधित अधिकारी/कर्मचारी पदोन्नतीसाठी पात्र ठरल्यास, त्यांना ११ महिन्यांसाठी किंवा विभागीय चौकशी/न्यायालयीन कार्यवाही अंतिम होईल यापैकी जे अगोदर होईल तेवढ्या कालावधीसाठी खालील अटीच्या अधीन राहून निव्वळ तदर्थ पदोन्नती देण्यात यावी. खालील अटी व शर्ती तदर्थ पदोन्नतीच्या आदेशामध्ये सुस्पष्टपणे नमूद कराव्यात :-

(i) शिस्तभंगविषयक/न्यायालयीन कार्यवाहीच्या अधिन दिली जाणारी तदर्थ पदोन्नती केवळ तात्पुरती असेल व या तदर्थ पदोन्नतीमुळे नियमितपणाचे व ज्येष्ठतेचे कोणतेही लाभ अशा अधिकारी/कर्मचा-यांना मिळणार नाहीत.

(ii) ही तदर्थ पदोन्नती "पुढील आदेशापर्यंत असेल". तसेच कोणत्याही वेळी दिलेली तदर्थ पदोन्नती रद्दकरून मुळ पदावर पदावनत करण्याचा हक्क शासन राखून ठेवीत आहे."

On perusal of the provision under the aforesaid clause, we are convinced that the said provision would squarely apply in the present matter.

4. In the circumstances, while granting time to the respondents to work out the matter, we deem it appropriate to pass the following order :-

ORDER

(i) Time as asked for by the respondents is granted.

(ii) The respondents are directed to consider the case of the applicant for granting her provisional promotion as provided in clause 11 of the G.R. dated 15.12.2017 and for that purpose it is further directed that the respondents shall call the meeting of the Departmental Promotion Committee within 02 weeks from the date of this order for the said

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purpose and give provisional promotion to the applicant, if she fulfils the conditions as are provided in clause 11 of the G.R. dated 15.12.2017, and on the terms and conditions incorporated in the said G.R.

(iii) S.O. to 20.02.2023.

(iv) Steno copy allowed for the use of learned Presenting Officer.

MEMBER (A)

ARJ ORAL ORDER 08.12.2023

VICE CHAIRMAN