

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO(S). 4544 OF 2014**

**KISHOR SHAMRAO SAO (SINCE DECEASED)**

**BY LEGAL REPRESENTATIVE**

**WIFE SMT. RATNA WD/O KISHOR**

**SAO & ORS.**

**....APPELLANT(S)**

**VERSUS**

**STATE OF MAHARASHTRA AND ANR.**

**....RESPONDENT(S)**

**ORDER**

1. The challenge in this appeal is laid to the judgment and final order dated 5<sup>th</sup> February, 2013 passed by the Division Bench of the High Court of Judicature at Bombay, Nagpur Bench<sup>1</sup>, in Writ Petition No. 1815 of 2012 whereby the High Court dismissed the said writ petition, observing that the appellants herein are not entitled to consequential benefits from their deemed date of promotion.

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<sup>1</sup> Hereinafter, referred to as the "High Court".

2. The appellants herein were appointed as Junior Clerks in the Law and Judiciary Department of the State of Maharashtra in 1986. The appellants cleared the Lower Standard Departmental Examination in the year 1989 and became eligible for confirmation in the existing vacancies as per Para 580(i) of Civil Manual for Junior Clerks, 1986<sup>2</sup>. The appellants submitted numerous representations to the Principal District & Sessions Judge, Chandrapur,<sup>3</sup> seeking fixation of seniority on their respective posts and promotion as 'Senior Clerk'. Since the appellants were not timely confirmed, as a consequence, they were not provided the appropriate seniority and were, therefore, placed below the persons, who had subsequently cleared the Lower Standard Departmental Examination.

3. Being aggrieved by the non-consideration of their genuine demands as per their entitlement, the appellants preferred Writ Petition No. 439 of 1995<sup>4</sup> before the High Court, which was allowed *vide* judgment dated 24<sup>th</sup> March, 2009 and the Registrar of the High Court and District Judge, Chandrapur were directed to determine the seniority and date of confirmation of the appellants.

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<sup>2</sup> Hereinafter, referred to as "Civil Manual, 1986".

<sup>3</sup> Hereinafter, referred to as "District Judge, Chandrapur".

<sup>4</sup> Later renumbered as Writ Petition No. 3 of 2007.

4. The Division Bench, while deciding the said writ petition, clearly held that when two members are eligible for confirmation, then the principles of equity and natural justice will prevail and the senior between them will be confirmed first, subject to the riders contained in para 580(iii) of the Civil Manual, 1986. Subject to the availability of vacancies, the appellants herein could be considered for grant of deemed confirmation from the date when the vacant posts became available. The High Court further clarified that in the event of vacancies for permanent posts being available, the appellants herein would be entitled to get seniority over respondent Nos. 4 to 6 therein.

5. Acting in compliance of the aforesaid directions, the District Judge, Chandrapur, vide order dated 29<sup>th</sup> May, 2009 assigned the seniority and deemed promotion to the appellants with effect from 8<sup>th</sup> June, 2009.

6. The appellants represented to the District Judge, Chandrapur, seeking promotion from an *ante* date and the consequential benefits flowing therefrom. The District Judge, Chandrapur, passed an order dated 1<sup>st</sup> June, 2010, in purported compliance with the judgment of the High Court in Writ Petition No. 439 of 1995 and assigned the deemed date of promotion to the

cadre of Senior Clerk and the cadre of Assistant Superintendent to the appellants herein from different dates in the year 1991 and 2004 respectively. The persons who were junior to the appellants and had been promoted in contravention of the rules, were assigned lower seniority by the very same order. Indisputably, this order has attained finality as the same was not challenged any further.

7. Praying for consequential benefits flowing from the grant of further promotion and consequential monetary benefits from the date of their deemed promotion, the appellants preferred representations before the District Judge, Chandrapur which did not meet the desired results and *vide* communication dated 9<sup>th</sup> January, 2012, they were informed that since the High Court while passing the order dated 24<sup>th</sup> March, 2009 had not specifically accepted the claim of arrears of salary made by the appellants and thus, they were not entitled to the said relief.

8. Feeling aggrieved, the appellants preferred Writ Petition No. 1815 of 2012 before the High Court which has been dismissed *vide* order dated 5<sup>th</sup> February, 2013 which is assailed in this appeal by special leave.

9. We have given our thoughtful consideration to the submissions advanced at the bar and have gone through the impugned judgment and the material placed on record.

10. The entitlement of the appellants to receive *ante* dated promotion is no longer *res integra* since the District Judge, Chandrapur, while issuing order dated 1<sup>st</sup> June, 2010 has already assigned the dates mentioned therein(*supra*) to be deemed dates of promotion of the appellants as Senior Clerk and Assistant Superintendent. The appellants were selected as Junior Clerks and were performing their duties to the satisfaction of their employer. Needless to say that there is no major difference in the nature of duties to be performed by a Junior Clerk or a Senior Clerk, as the case may be. Hence, if the prayer of the appellants is acceded to, it would not mean that the appellants would receive monetary benefits without discharging their duties.

11. The only live issue which thus remains for our consideration is with regard to the grant of consequential benefits to the appellants.

12. Learned counsel for the appellants has drawn the attention of this Court to para 524 of the Civil Manual, 1986 which applies to the cadre. The provision reads as below: -

“524. In the matter of promotions and confirmations, the District Judge should take into consideration the following principles. – (1) All Clerks who pass the Lower Standard Departmental Examination should be confirmed immediately in the existing vacancies. Such confirmation should not be deferred till the passing of the said examination by their seniors.”

13. The said Rule was interpreted by a Division Bench of the High Court of Bombay in the case of ***Shashikumar s/o Nagnathrao Dixit v. State of Maharashtra and Others***<sup>5</sup> making it clear that the Clerks who passed the Lower Standard Departmental Examination must be confirmed immediately in the existing vacancies and such confirmation should not be deferred till the passing of the said examination by their seniors. However, no sooner the seniors clear the examination, they would be entitled to the promotion from the date of the occurrence of vacancy.

14. The clear implication of the said Rule is that the confirmation in the existing vacancy of a Clerk is dependent on their passing the Lower Standard Departmental Examination and it is from that date, an individual passing the examination should be confirmed. The judgment of the High Court in ***Shashikumar***(*supra*) still holds the field.

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<sup>5</sup> 2005 (3) Mh.L.J. 521.

15. In the present case, the view taken by the Division Bench in the impugned order that since there was no direction to grant consequential benefits to the appellants in the first round of litigation, the appellants will not be entitled to these benefits, is *ex facie* unjust and inequitable, given the fact that the appellants had been sincerely discharging their duties from 1986 and were also granted promotions from time to time. Thus, depriving them from the monetary benefits flowing from the retrospective promotion inspite of having discharged almost identical duties would be wholly arbitrary and unsustainable in the eyes of law.

16. In this view of the matter, we are of the opinion that the appellants are entitled to receive consequential monetary benefits flowing from the date of their deemed promotion as Senior Clerk and Assistant Superintendent as indicated in the order dated 1<sup>st</sup> June, 2010 passed by the District Judge, Chandrapur.

17. This Court is apprised that all the appellants herein have already superannuated. Thus, the respondents are directed to calculate and pay the consequential monetary benefits flowing from the date of deemed promotion of the appellants within a period of three months from today.

18. Resultantly, the appeal stands allowed and the impugned order is set aside.

19. Pending application(s), if any, shall stand disposed of.

.....**J.**  
**(VIKRAM NATH)**

.....**J.**  
**(SANDEEP MEHTA)**

**New Delhi;**  
**January 30, 2025.**