

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
AURANGABAD BENCH, AURANGABAD**

**ORIGINAL APPLICATION 626 OF 2011**

**DISTRICT : HINGOLI & AURANGABAD**

1. Shri Kishan s/o Prabhu Padole, )  
Occ : Service as Sectional Engineer,)  
Under Z.P Works Division, Hingoli )  
R/o: Plot no. 105, Ganganagar, )  
[Karwadi], Hingoli. )
  
2. Anand S/o Narsingrao Patange )  
Occ : as above, R/o: Plot no 104, )  
Ganganagar, [Karwadi], Hingoli. )
  
3. Deorao s/o Kanhoji Balkhande )  
Occ : Service [Jr Engineer under )  
Z.P Water Supply Sub-Division, )  
Sillod], R/o: R.H no. 29, Jagdish )  
Nagar, New Pahadsinghpura, )  
Behind Bibi Ka Maqbara, )  
Aurangabad. )...**Applicant**

**Versus**

The State of Maharashtra )  
Through its Secretary, )  
Public Works Department, Mantralaya )  
Mumbai 400 032. )...**Respondent**

Shri A.S Deshmukh, learned advocate for the Applicants.

Shri S.K Shirse, learned Presenting Officer for the Respondent.

**CORAM : Shri Rajiv Agarwal (Vice-Chairman)**

**Shri J.D Kulkarni (Member) (J)**

**DATE : 18.10.2016**

**PER : Shri Rajiv Agarwal (Vice-Chairman)**

**ORDER**

1. Heard Shri A.S Deshmukh, learned advocate for the Applicants and Shri S.K Shirse, learned Presenting Officer for the Respondent.

2. This Original Application has been filed by the Applicants claiming that they are eligible to be promoted as Sub-Divisional Officers under Rule 13(d) of the Recruitment Rules dated 19.12.1970.

3. Learned Counsel for the Applicants argued that the Applicants were appointed as Assistant to Junior Engineer by the Chief Executive Officers of Zilla Parishad, Parbhani and Aurangabad on 19.11.1990, 29.11.1990 and 24.12.1997 respectively. They were promoted as Junior Engineer on 1.4.2006, 1.4.2006 and 24.6.2003 respectively. The Applicants have passed Civil Engineering Assistant's Course of one year duration. The Applicants have also passed Professional Examination of Junior Engineer's conducted by Maharashtra Engineering Research Institute, MERI. Learned Counsel for the Applicants argued that the Recruitment Rules for the post of Deputy Engineers were promulgated by the State Government, by G.R dated 19.12.1970. Under Rule 13(d), all appointment to the cadre of Sub-Divisional Officer are to be made by promotion from the (i) Overseers with Diploma Qualifications and (ii) Overseers holding Upper Subordinate Certificates. Learned Counsel for the Applicants stated that by G.R dated 25.1.1972, non-qualified Overseers appointed as Overseers prior to 19.12.1970 are held eligible for promotion to the post of Sub Divisional Officer against 20% of 50% share of vacancies in the cadre of Sub-Divisional Officers, subject to certain conditions. Learned Counsel for the Applicants stated that the Respondents are treating the Applicants as non-qualified Overseers and denying promotion as Sub Divisional Officer under this G.R. However, the case of the

Applicants is that they are 'qualified Overseers' covered by Rule 13(d)(ii) of 19.12.1970 Rules. Learned Counsel for the Applicants stated that Secretary of the Maharashtra State Technical Education Board, Mumbai, by letter dated 20.11.2003 has certified that one year course of Civil Engineering Assistant is equivalent to one and half year Sub-Overseers course at Government Polytechnics, Nagpur & Amravati and two years upper Subordinate course at Latur and Aurangabad conducted by Osmania University and one and half years course of Surveyor, I.T.I, Mumbai. Another letter was sent to the Government on 6.4.2005 on similar lines. Learned Counsel for the Applicants argued that the Applicants fulfill the requirement of Rule 13(d)(ii) of 1970 Rules that they are Overseers holding qualification of Upper Subordinate Certificate. Learned Counsel for the Applicants stated that under Rule 3 of the Maharashtra Service of Engineer, Class-II (Recruitment by promotion of certain Junior Engineers as Sub-Divisional Officers) Rules, 1975, courses mentioned in the letters referred to above, are required for promotion as S.D.O and one year course of C.E.A is equivalent to these courses.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondent that the Rules of 1975 recognize the following courses as equivalent to Upper Sub-Ordinate Certificate awarded by Osmania University, viz. two years course of Purnmal Lahoti Smarak

Technical College, Latur or Government Polytechnic, Aurangabad or one and half year Sub-Overseers Course of Government Polytechnic, Nagpur or Amravati. No other course is recognized as equivalent to the Upper Sub Ordinate Certificate awarded by Osmania University. Learned Presenting Officer argued that one year course of Civil Engineering Assistant is not recognized as equivalent to Upper Sub-Ordinate Certificate awarded by Osmania University under the rules. Opinion given by the Maharashtra State Technical Education Board cannot amend the Statutory Rules. The Applicants do not hold Upper Subordinate Certificate or equivalent qualifications and their cases are clearly covered under G.R dated 25.1.1972. They are not eligible to be promoted as S.D.O.

5. We find that the Recruitment Rules for appointment to the post of Sub-Divisional Officers (S.D.O) are contained in G.R dated 19.12.1970. Rule 13(d) reads:-

“13(d) Sub to Rule 14 below, all appointments to the cadre of Sub-Divisional Officers shall be made by promotion from the following categories of the Subordinate Service of Engineers.”

This Upper Subordinate Certificate issued by Osmania University, Hyderabad, was recognized by G.R dated

26.8.1965. By the Statutory Rules framed under proviso to Article 309 of the Constitution, viz. Maharashtra Service of Engineers, Class-II (Recruitment by promotion of certain Junior Engineers as Sub-Divisional Officers) Rules, 1975, the following qualifications were treated at par with the 'Upper Subordinate Course' awarded by Osmania University.

“(b) Who has passed the two years, Course of Purnmal Lahoti Smarak Technical College, Latur, or of the Government Polytechnic, Aurangabad, or one and half year Sub-Overseers Course of Government Polytechnic, Nagpur or Amravati.”

By amendment of 3.5.1985, one and half years course of Government Engineering College, Nagpur was added to the list. The Applicants claim is based on the letters dated 20.11.2003 from the Maharashtra State Technical Education Board, Mumbai to the Irrigation Department and another letter dated 6.4.2005 issued to Higher & Technical Education Department that the Civil Engineering Assistant course is equivalent to Upper Subordinate Certificate awarded by Osmania University. The Respondent claim that this was the opinion of the Board, which was not accepted by the Government. Unless, the Recruitment Rules of 1975 are amended by specifically including this qualification, this qualification is not sufficient for promotion to the post of S.D.O under

Rule 13(d)(ii) of 19.12.1970 Rules. We are in agreement with the contention of the Respondent in this regard. The original G.R for promotion to the post of S.D.O from that of Overseers (now called Junior Engineer) was issued on 26.8.1965. Accompaniment to this G.R in clause 3 provided that Graduate (Degree holder in Engineering) with 3 years' service as Overseer, Diploma holder with 8 years of service, Upper Sub-Ordinate Certificate from Osmania University holders with 10 years of service and Non-qualified Overseers with 13 years of service were held eligible for promotion. By G.R dated 19.12.1970, Rules were enlarged to include appointment to Class-I & Class-II posts in Engineering service and Rule 13(d) dealt with promotion from the post of Overseer to that of S.D.O (Deputy Engineer). Only those holding Diploma in Engineering and holding Upper Subordinate Certificate from Osmania University were held eligible for promotion as S.D.O. G.R dated 25.1.1972 provided that those non-qualified Overseers (i.e. not holding Diploma or Upper Subordinate Certificate), who were appointed before 19.12.1970, could be considered for promotion as S.D.O, subject to certain conditions. Then Rules of 24.9.1975 were framed and in addition to Upper Subordinate Certificate of Osmania University, some other qualifications were recognized for promotion to the post of S.D.Os. These rules of 1975 were amended in 1985 to add one more course. However, the Course/Certificate of Civil Engineering

Assistant was never recognized under these Rules as qualification for promotion from the post of Junior Engineer (Overseers) to that of S.D.O. We are unable to accept the contention of the Applicants that one year course of C.E.A is equivalent to Upper Subordinate Certificate Course of Osmania University or any other course recognized by 1975 Rules as amended. Hon'ble Bombay High Court (Aurangabad Bench) by judgment dated 2.3.2016 in Writ Petition no 8030 of 2015 and others held that:-

“In the light of discussion in the foregoing paragraphs and the ratio laid down by Hon'ble Supreme Court in the case of State of Rajasthan and others Vs. Lata Arun (cited supra) and other judgments referred hereinabove it is not for Courts to decide whether a particular educational qualification should or should not be accepted as equivalent to the qualification prescribed by the authority.”

We are, therefore, unable to accept the contention of the Applicants that one year's course of Civil Engineering Assistant is equivalent to Upper Subordinate Certificate of Osmania University or any other qualification prescribed in 1975 Rules. The Applicants are non-qualified Overseers (Junior Engineers) and are not

eligible to be promoted as S.D.O as they were appointed after 19.12.1970.

6. Having regard to the aforesaid facts and circumstances of the case, this Original Application is dismissed with no order as to costs.

**(J.D Kulkarni)**  
**Member (J)**

**(Rajiv Agarwal)**  
**Vice-Chairman**

**Place : Aurangabad**

**Date : 18.10.2016**

**Dictation taken by : A.K. Nair.**