

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 323 OF 2014

DISTRICT : MUMBAI

1. Maharashtra Government Polytechnic)
Teachers [Gazetted Varge-1], Welfare)
Association [Affiliated to Maharashtra)
Rajya Rajpatrit Adhikari Mahasangh],)
Through its President, Shri S.M Naik,)
Having office at Government Polytechnic)
49, Kherwadi, Bandra [E], Mumbai 400051)

 2. Shri Rajendrakumar P. Barhate,)
Head of Department, Civil Engineering)
Government Polytechnic,)
49, Kherwadi, Aliyaware Jung Road,)
Bandra [E], Mumbai 400051.)
R/o: C-211, Unique Bazar C.H.S)
A/P Pen, Tal-Pen, Dist-Raigad.)

 3. Shri Hemant Shripad Joshi,)
Government Service as Lecturer in)
Electrical Engineering Government)
Polytechnic, VMV Road, Gadgenagar,)
Amravati, R/o: 16, Deepnagar No. 2,)
Subhash Colony, Dasturnagar Road,)
Amravati.)
-)...Applicants**

Versus

1. The State of Maharashtra & Ors)
Through Principal Secretary,)
Higher & Technical Education Dept,)
Mantralaya, Mumbai 400 032.)

2. The Chairman/Secretary,)
Maharashtra Public Service Commission,)
Mumbai, having office at 3rd floor,)
Bank of India Bldg, M.G Road, Fort,)
Hutatma Chowk, Mumbai 400 001.)

3. All India Council for Technical)
Education, [AICTE], having office at)

7th floor, Chadralok Building, Janpath,)
New Delhi 110 001.)...**Respondents**

Shri B.A Bandiwadekar, learned advocate for the Applicants.

Mrs Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : Justice Mridula Bhatkar (Chairperson)
Mrs Medha Gadgil (Member) (A)

RESERVED ON : 30.03.2022

PRONOUNCED ON : 12.04.2022

PER : Justice Mridula Bhatkar (Chairperson)

J U D G M E N T

1. The application is filed through Maharashtra Government Polytechnic Teachers Welfare Association through its President Mr S.M Naik, and applicant no. 2, Head of Department of Civil Engineering Government Polytechnic, however, he expired. Applicant no. 3 is the Lecturer in Electrical Engineering, Government Polytechnic, Gadgenagar, Amravati. Respondent no. 1 is Principal Secretary, Higher & Technical Education, Respondent no. 2 is Maharashtra Public Service Commission and Respondent no. 3 is All India Council Technical Education [AICTE].

2. The applicants-Association challenges Rules 3 & 4 of the Rules of recruitment called "Principal, Head of the Department, Lecturer and Workshop Superintendent in Government Polytechnics and Equivalent Institutes [Recruitment] Rules, 2012", on the ground that these two rules have closed the promotional chances of Lecturers to the post of Head of Department and Head

of Department to the post of Principal, as the channel of promotion is excluded in the new Recruitment Rules and so also the provisions of age relaxation is also taken away. Thus the applicants who are working on the post of Lecturers and Head of the Department face stagnation to their post since 1997.

3. Learned counsel for the applicants-Association has submitted that in the earlier old Recruitment Rules of 1993 or 2008, there was a provision of two channels, i.e. by promotion and nomination were made available to the Lecturers as well as to the Heads of the Department for their higher posts. However, by new amended Recruitment Rules of 2012, Rules 3 & 4 were amended thereby restricting only one channel for appointment i.e. recruitment by nomination and the channel of promotion is deleted in the rules. Thus, learned counsel for the applicants has submitted that as per the old Rule No. 11 of 2008 Rules, it was mandatory to appoint the candidates to the post of Head of the Department and Principals by maintaining the ratio of 50:50. However, due to the new Rules of 2012, the upper age limit which was earlier 45 & 50 years, but that proviso of age relaxation for the persons in service is deleted. Thus, no provision of age relaxation is available for in-service candidates; resultantly the chances of promotion of the feeder cadre of Lecturers and Head of the Department are scuttled. Learned counsel for the applicants has submitted that the rule is unjust and should not have been made applicable to the Members of the applicants-Association when the posts are vacant since 1997.

4. Learned counsel went through the relevant Notification dated 1st November, 1993. Relevant Rules 3 & 4 of the Notification reads as under:-

“3. Appointment to the post of Principal of Government Polytechnic, Deputy Director of Technical Education and

Secretary, Board of Technical Examination in the Directorate shall be made either:-

(A) by promotion of a suitable person on the basis of selection from amongst persons holding the posts of Head of Department, Assistant Director of Technical Education [Technical], Deputy Secretary, Board of Technical Examination or Training and Placement Officer, possessing qualifications and experience prescribed for appointment by nomination in sub-clauses (ii) and (iii) of clause (B) of these rules; or]

(B) by nomination from amongst candidates, who:-

- (i) unless already in the service of Government are not more than 45 years of age;
- (ii) possess Master's Degree in Engineering, Technology or Technical Education in the First Class in the subjects as mentioned in schedule-A and
- (iii) Possess:- (a) Industrial or practical research experience of not less than five years; (b) teaching experience for a period of not less than five years as Lecturer and Head of Department levels, or (c) possess combined Administrative, Industrial, Practical, Research and Teaching Experience for a period of not less than five years gained after securing the qualifications mentioned in sub-clause (ii) above;

Provided that, the age limit may be relaxed by Government on the recommendation of the Commission in favour of candidates possessing exceptional qualifications or experience or both:

Provided further than, preference may be given to candidates possessing Ph. D Degree in Engineering Technology or Technical Education or having exceptional experience or both.

4. Appointment to the posts by nomination and promotion shall be in the ratio of 50:50.”

5. Learned counsel for the applicants pointed out the orders of promotion dated 3.9.1997 to the post of Head of Department and

also the last appointment orders of the Principals issued on 20.5.2008 and argued that since then none of the Members of the applicants-Association was considered for promotion though many posts are kept vacant by the Government. Learned counsel for the applicants pointed out that the Association has made grievance by letter dated 31.12.2012 addressed to the Hon'ble Chief Minister. However, in the advertisement of 2013, which was published on 27.9.2013 and 9.10.2013 for Head of the Department, no avenue of appointment by promotion was made available. Learned counsel for the applicants relied on the chart of vacancies which is obtained by the applicants through R.T.I on 25.6.2013, reproduced below:-

अ. क्र	पदनाम	मंजूर पदे	भरलेली पदे	रिक्त पदे
			नियमित	
१	प्राचार्य	४४	१६	२८
२	विभागप्रमुख	३६०	७६	२८४
३	अधिव्याख्याता	२४७६	१३३२	११४४
	एकूण	२८८०	१४२४	१४५६

6. Learned counsel for the applicants argued that as per G.R dated 30.10.1994, the Career Advancement Scheme is not a promotion, but one is put in that grade pay, and therefore, the arguments of the Members of the applicants-Association that the Lecturers or Heads of Departments are given the benefits under the Career Advancement Scheme and therefore, their claim that the promotional avenues are closed, is not sustainable, especially in view of the note given by the General Administration Department in this matter.

7. Learned counsel for the applicants pointed out to the noting of the General Administration Department to the Higher Technical Education Department, where G.A.D has given the benefits of age relaxation to the persons in service in favour of the applicants. Learned counsel for the applicants argued that the All India

Council of Technical Education in their norms/Circular dated 5.3.2010 did not suggest that in the recruitment process the channel of appointment by promotion should not be made available and the appointments to the post of Principals and Head of Department should be made only by nomination. However, the action of the Respondents by amending the Rules of 2012 is contrary to Articles 14 & 16 of the Constitution of India. Learned counsel for the applicants further submitted that the retirement age of Principals and Heads of Department is now increased from 58 years to 62 & 65 years respectively, and therefore, the policy of the Government of not giving the benefits of provisions of age relaxation to in service candidates is illegal. Learned counsel for the applicants has submitted that for the post of Director as per the advertisement dated 30.11.2013 and also for the post of Principal as per advertisement dated 1.11.2013, the age limit is not applicable for the Government servants who are in-service.

8. Learned counsel for the applicants relied on the following judgments:-

- (i) **Raghunath Prasad Singh Vs. Secretary, Home (Police) Department, Government of Bihar & Ors, AIR 1988 S.C 1033.**
- (ii) **State of Tripura & Ors Vs. K.K Roy 2004 SCC (L & S) 651.**
- (iii) **Manoharan & Ors Vs. Union of India & Ors, 2008 (1) SCC (L & S) 870.**
- (iv) **Kulwant Singh & Ors Vs. Dayaram & Ors 2015 (1) SCC (L & S) 625.**

9. Learned P.O took preliminary objection on the point of delay. She submitted that the Rules came into existence on 10.12.2012 and the Original Application is filed on March, 2014. Thus, there

is a delay of 18 months and the Respondents have raised this objection in para 3.3 of the affidavit in reply. A serious objection was taken on the point of maintainability. The locus of the applicants-Association is challenged to come before the Tribunal. Learned P.O submitted that the applicants-Association is neither recognized nor registered Association. Therefore, such application should not have been entertained by the Tribunal. Learned P.O submitted that this objection was also taken in para 7 of the sur-rejoinder filed on 28.10.2015.

10. Learned C.P.O relying on the affidavit in reply dated 29.10.2014 filed by Dr Abhay E. Wagh, Deputy Secretary in the office of Higher & Technical Education Department, Mantralaya, Mumbai 400 032, affidavit in reply dated 30.1.2015 filed by Shri M.P. Jadhav, Under Secretary, M.P.S.C, affidavit in sur-rejoinder dated 20.10.2015, and additional affidavit in reply dated 7.2.2017 filed by Dr Kiran Patil, Deputy Secretary in the office of Higher & Technical Education, Mantralaya, Mumbai and affidavit in sur-rejoinder dated 4.3.2020 filed by M.K Dawane, Assistant Director (Technical), in the office of the Directorate of Technical Education, Mumbai, submitted that the decision of appointment/recruitment to be made on the post of Head of the Department or the Principal by nomination is a policy decision of the State Government and is not illegal. Learned P.O has further submitted that two advertisements were issued by M.P.S.C on 27.9.2013 & 9.10.2013 as per the Recruitment Rules of 2012 for the post of Head of the Department, Government Polytechnic, Group-A. It is incorrect to say that the Government has closed the promotional avenues of the applicants on account of the amended Recruitment Rules. There was no bar for the applicant to appear for the examination responding to the advertisement and he would have been appointed to the higher post. Though the Rules were amended by

Notification dated 10.9.2012, Government of Maharashtra followed a standard procedure for revising the publishing the Recruitment Rules which are based on the guidelines dated 5.3.2010 given by the All India Council of Technical Education. The promotion order were issued till 2001 after fulfilling the promotional quota, some excess promotions were also made from the quota available for the nomination, which was earlier 50:50. Learned P.O submitted that the age limit as per the Recruitment Rules of 2008, for the post of Principal was increased from 45 years to 50 years and for Head of the Department from 40 years to 45 years. Learned P.O submitted that there is always age relaxation given to in-service Government employees.

11. Learned P.O for the Respondents relied on the judgment of the Hon'ble Supreme Court dated 10th March, 2022 in the case of SK Nausad Rahaman & Ors Vs. Union of India & Ors, Civil Appeal No. 1243 of 2022 on the point of policy making decision. She also relied on the decision of the Hon'ble Supreme Court in Balco Employees Union (Regd) Vs. Union of India & Ors, (2002) 2 S(2002) 2 SCC 333.

12. At the outset, we are of the view that the application suffers a legal flaw of maintainability. Applicant No. 2 Shri R.P Barhate, has expired and Applicant No. 3, Shri Hemand S. Joshi has already retired. On the point of maintainability of the Original Application, regarding the applicants-Association, when we inquired, we found that the Association is neither registered nor recognized association as per Rule 29 of the Maharashtra Civil Services (Conduct) Rules, 1979. It is necessary for the Government servants to get the Association registered or recognized by the Government. Unless they are registered or recognized, the Association cannot be considered as a legal entity.

13. Rules 3, 4 & 5 of the Recruitment Rules of 2012 are reproduced as follows :-

“3. Appointment to the post of Principal of Government Polytechnics and Equivalent Institutes shall be made by nomination on the basis of strict selection on merit from amongst the candidates who,

(a) Are not more than 54 years of age,

(b) Possess the qualification and experience as prescribed in AICTE or relevant statutory body for this post from time to time.

4. Appointment to the post of Head of Department in various Engineering, Pharmacy, Hotel Management and Catering Technology and Non-Engineering disciplines in Government Polytechnic and Equivalent Institutes shall be made by nomination on the basis of strict selection on merit from amongst the candidates who,

(a) Are not more than 50 years of age;

(b) possess the qualification in the related branch of Engineering or Technology and experience as prescribed by AICTE or relevant statutory body for the concerned post from time to time.”

5. Appointment to the post of Lecturer in Engineering, Pharmacy, Hotel Management and Catering Technology and Non-Engineering discipline or Workshop Superintendent in Government Polytechnics and equivalent institutes shall be made by nomination from amongst the candidates who;

(a) are not more than 33 years of age;

(b) possess the qualification in related branch of Engineering prescribed by AICTE or relevant statutory body for the concerned post from time to time.”

14. In the case of **Raghunath Prasad Singh’s** case, **AIR 1988 S.C 1033**, the Hon’ble Supreme Court held that:-

“Reasonable promotional opportunities should be available in every wing of public service. That generates efficiency in service and fosters the appropriate attitude to grow for achieving excellence in service”.

15. In the case of **State of Tripura & Ors, 2004 SCC (L & S) 651**, the Hon’ble Supreme Court observed that it is the

Constitutional obligation of the State to create the promotional avenues.

16. In the case of **Manoharan & Ors, (2008) 1 SCC (L & S) 870**, the Hon'ble Supreme Court observed that the rules are to be made applicable with prospective effect and it cannot be applied retrospectively to any vacancy which has arisen prior to coming into force of the said amended Regulations and the vacancies must be filled up in terms of the law as was existing prior thereto.

17. In the case of **Kulwant Singh, 2015 (1) SCC (L & S) 625**, it is stated that prospective effect is to be given to the amended rules. It is settled principle of law that the posts which fall vacant prior to the amended rules are to be governed by the unamended rules.

18. In the case of **SK Nausad Rahaman (supra)** on the point of policy making decision, the Hon'ble Supreme Court held as under:-

“43. The realm of policy making while determining the conditions of service of its employees is entrusted to the Union for persons belonging to the Central Civil Services and to the States for persons belonging to their civil services. This Court in the exercise of judicial review cannot direct the executive to frame a particular policy. Yet, the legitimacy of a policy can be assessed on the touchstone of constitutional parameters. Moreover, short of testing the validity of a policy on constitutional parameters, judicial review can certainly extend to requiring the State to take into consideration constitutional values when it frames policies. The State, consistent with the mandate of Part III of the Constitution, must take into consideration constitutional values while designing its policy in a manner which enforces and implement those values.”

19. We have considered the rule relied by learned counsel Mr Bandiwadekar. It is true that the promotional avenues should not be closed by the authority and his name should be considered for

promotion. In the present case, it cannot be said that the Government should have closed the promotional avenues of the applicant to the post of Head of the Department or Principal. By this amendment, the Government has taken decision to provide only one channel and i.e. the channel by nomination. Thus, the recruitment is only be by nomination, i.e. promotional channel is available and not closed. However, the opportunity to get promoted is not closed. The Government employee who is in service and working as a Lecturer or Professor is allowed to appear in the process of recruitment by nomination and he/she is also entitled to get the benefit of age relaxation being in-service Government employee. Thus, only the method of competition is changed and not the chance of promotion is curtailed. It is a misconception and misunderstanding of the applicant. Government has always power to change the policy of the recruitment process in order to get better qualified persons to attain higher standard and quality in work. There is no injustice in this process, the process demand merit.

20. In view of the above, Original Application is dismissed.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 12.04.2022
Dictation taken by : A.K. Nair.