

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

**ORIGINAL APPLICATION NO. 372 OF 2014
With
ORIGINAL APPLICATION NO. 373 OF 2014
With
ORIGINAL APPLICATION NO. 539 OF 2014
With
ORIGINAL APPLICATION NO. 147 OF 2015**

ORIGINAL APPLICATION NO. 372 OF 2014

DISTRICT :NANDED

- | | |
|----------------------------------|----------------|
| 1. Ashok s/o Marotrao Takle, |) |
| Age:56 Yrs, Occu: Service |) |
| (as Civil Engineering Assistant |) |
| in O/o E.E., UPP, Division No.5, |) |
| Hadgaon, Dist. Nanded), |) |
| R/o. C/o U.P.P. Colony |) |
| At.Po.Tq-Hadgaon |) |
| Dist. Nanded. |) |
| 2. Sheshrao s/o Tukaram |) |
| Chauhan, Age:51 Yrs., Occu: |) |
| As above, R/o. C/o. U.P.P. |) |
| Colony, At.Po.Tq-Hadgaon |) |
| Dist. Nanded. |)...Applicants |

VERSUS

- | | |
|------------------------------|---|
| 1. State of Maharashtra, |) |
| Through its Secretary, |) |
| Water Resources Department, |) |
| M.S., Mantralaya, Mumbai-32. |) |

2. The Executive Director,)
Godavari Marathwada Irrigation)
Development Corporation,)
Aurangabad.)
3. The Superintending Engineer,)
Upper Penganga Project Circle)
Nanded, Sinchan Bhawan,)
Nanded.)
4. The Executive Engineer,)
Upper Penganga Project Division)
No.5, Hadgaon, Dist. Nanded.)..**Respondents**

With

ORIGINAL APPLICATION NO. 373 OF 2014

DISTRICT :NANDED

1. Ulhas s/o Keshavrao Joshi,)
Age: 48 Yrs., Occu: Service)
(as Civil Engineering Assistant)
in O/o E.E., UPP, Division No.8,)
Nanded), R/o. "Sarthak",)
Snehankit Colony, Near)
Madhavrao Patil High School,)
Taroda (Kh), Nanded.)
2. Kishan s/o Tukaram Ubale,)
Age: 53 Yrs., Occu: As above,)
R/o. H. No.1-1-42, Dhanwantry)
Colony, Purna Road, Nanded.)
3. Mohan s/o Malleshu Bakkewar,)
Age: 50 Yrs., Occu: As above,)
R/o. "Om Sai", Near Hanuman)
Mandir, Swami Vivekanand)
Nagar, Bhawsar Chowk, Nanded.)

4. Madhav s/o Pandurang Gaikwad,)
Age : 56 Yrs., Occu: As above,)
R/o. "Shivkrupa" Society, Near)
Swanyamwar Mangal Karyalaya,)
Malegaon Rd, Taloda (Kh),)
Nanded.)**)...Applicants**

VERSUS

1. State of Maharashtra,)
Through its Secretary,)
Water Resources Department,)
M.S., Mantralaya, Mumbai-32.)
2. The Executive Director,)
Godavari Marathwada Irrigation)
Development Corporation,)
Aurangabad.)
3. The Superintending Engineer,)
Upper Penganga Project Circle)
Nanded, Sinchan Bhawan,)
Nanded.)
4. The Executive Engineer,)
Upper Penganga Project Division)
No.8, Nanded.)**)..Respondents**

With

ORIGINAL APPLICATION NO. 539 OF 2014

DISTRICT :AURANGABAD

1. Madan Manohar Kolangade)
Age 73 years,)
Occ. Civil Engineering Assistant(Retd.))
R/o 110, Shastri Nagar,)
Near Dr. Hegdewar Hospital,)

Aurangabad.)
(Since deceased, though his L.Rs.))
1-A) Smt. Manjiri w/o Madanrao)
Kolangade, Age major,)
Occ. Household')
1-B) Dinesh s/o Madanrao Kolangade)
Age major, Occ. Service)
1-C) Nilesh s/o Madanrao Kolangade)
Age major, Occ. Service.)
All R/o 110, Shastri Nagar,)
Near Dr. Hegadewar Hospital,)
Aurangabad.)...**Applicants**

VERSUS

1. The State of Maharashtra,)
Through Secretary,)
Water Resources and CAB Deptt.,)
Mantralaya, Mumbai-32.)
2. The Superintending Engineer,)
Data Collection & Analysis Circle)
Dindori, Nasik.)
3. The Executive Engineer,)
Water Resources Division,)
Aurangabad.)..**Respondents**

With

ORIGINAL APPLICATION NO. 147 OF 2015

DISTRICT : NANDED

1. Sainath s/o Jairam Korpakwad,)
Age:40 Yrs., Occu: Service)
(as Civil Engineering Assistant)
in O/o E.E., UPP, Division No.6,)
Nanded), R/o: Pragati Nagar,)
Taroda (Bk), Tal. & Dist. Nanded.)
2. Arun s/o Yadavrao Dhumale,)
Age: 49 Yrs., Occu: Service)
(as Civil Engineering Assistant)
in O/o E.E., UPP, Division No.6,)
Nanded), R/o. At Post Markhel,)
Tal. Degloor, Dist. Nanded.)
3. Prakash s/o Baliram Yerawar,)
Age: 52 yrs., Occu.: Service)
(as Civil Engineering Assistant)
in O/o E.E., UPP, Division No.6,)
Nanded), R/o : Pragati Nagar,)
Taroda (Bk), Tal. & Dist. Nanded.)**...Applicants**

VERSUS

1. The State of Maharashtra,)
Through its Secretary,)
Water Resources Department,)
M.S., Mantralaya, Mumbai-32.)
2. The Executive Director,)
Godavari Marathwada Irrigation)
Development Corporation,)
Aurangabad.)
3. The Superintending Engineer,)
Upper Penganga Project Circle)
Nanded, Sinchan Bhawan,)
Nanded.)

4. The Executive Engineer,)
Upper Penganga Project Division)
No.6, Nanded.)..**Respondents**

Shri A.S Deshmukh, learned advocate for the Applicants in O.A nos 372 and 373/2014, Shri N.U. Yadav, learned Presenting Officer for the Respondent no. 1 and Shri S.D Dhongade, learned advocate for Respondents no 2 to 4.

In O.A no 539/2014 Shri J.B Choudhary, learned advocate for the Applicant and Shri V.R Bhumkar, learned Presenting Officer for the Respondents.

In O.A no 147/2015, Shri A.S Deshmukh, learned advocate for the Applicant, Shri V.R Bhumkar, learned Presenting Officer for Respondents no 1 to 3 and Shri Sham Patil, learned advocate for Respondent no. 4.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)
Shri B.P Patil (Member) (J)

DATE : 16.08.2017

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri A.S Deshmukh, learned advocate for the Applicants in O.A nos 372 and 373/2014, Shri N.U. Yadav, learned Presenting Officer for the Respondent no. 1 and Shri S.D Dhongade, learned advocate for Respondents no 2 to 4.

In O.A no 539/2014 Shri J.B Choudhary, learned advocate for the Applicant and Shri V.R Bhumkar, learned Presenting Officer for the Respondents.

In O.A no 147/2015, Shri A.S Deshmukh, learned advocate for the Applicant, Shri V.R Bhumkar, learned Presenting Officer for Respondents no 1 to 3 and Shri Sham Patil, learned advocate for Respondent no. 4.

2. These Original Applications were heard together and are being disposed of by a common order as the issues to be decided are identical.

3. Learned Counsel for the Applicants argued that the Applicants in O.A no 372/2014 have been aggrieved by the action of the Respondent no. 1 in directing the Respondents no 2 and 3 by communication dated 4.2.2014 to cancel the exemption granted to the Applicants from passing the professional examination on attaining the age of 45 years. The Applicants are also aggrieved by order of recovery of excess payment made to them on granting them Time Bound Promotion. The Applicants were appointed as Technical Assistants on 10.5.1982 and 16.4.1985 respectively. By G.R dated 31.1.1989, a new cadre of Civil Engineering Assistant (C.E.A) was created. The Applicants were absorbed as C.E.A on 1.1.1984 and 1.10.1990 respectively. The next promotional post is Junior Engineer. However, for appointment as Junior Engineer, C.E.A has to pass a professional examination. The Applicants are relying on G.R dated 1.11.1977, which lays down that a Government servant

is not required to pass professional examination after he attains the age of 45 years. Learned Counsel for the Applicant contended that the Applicants were accordingly granted exemption from passing the professional examination after attaining the age of 45 years and were eligible to be promoted as Junior Engineer on the basis of seniority cum fitness. They were also eligible to get Time Bound Promotion / benefit of Assured Career Progression Scheme in the pay scale of Junior Engineers. The Respondent no. 3 passed order on 20.1.2014 granting them Time Bound Promotion in the pay scale of Junior Engineer. Learned Counsel for the Applicants argued that the impugned communication dated 4.2.2014 is illegal and it may be quashed and set aside. Learned Counsel for the Applicants stated that in terms of G.R dated 16.9.2016 issued by the Water Resources Department, Civil Engineering Assistants are now exempted from passing the professional examination for promotion to the post of Junior Engineer on attaining the age of 45 years. This G.R is based on order of this Tribunal in O.A no 344/2014 dated 5.12.2014. The judgment of this Tribunal was upheld by judgment dated 29.1.2016 by Hon'ble High Court (Aurangabad Bench). The Special Leave (C) Petition no. 14613/2016 against the judgment of Hon'ble High Court was dismissed by Hon'ble Supreme Court by judgment dated 15.7.2016.

4. Learned Presenting Officer and learned Advocate Shri Dhongade, argued that the Applicants are not eligible to get any relief.

5. We find that the Applicants are eligible to get exemption from passing the professional examination to get promotion to the post of Junior Engineer in terms of aforesaid G.R dated 16.9.2016. This G.R provides for such exemption, on attaining the age of 45 years. The order of exemption, even if passed after the G.R was issued, would be effective from the date on which an employee attained the age of 45 years. As such, the order of the Respondent no. 3 dated 8.11.2013 (Exhibit A-5, page 69) granting exemption from passing the professional examination from the date on which the Applicants attained the age of 45 years has to be held as valid. Similarly, order dated 20.1.2014 (Exhibit A-6) granting the Applicants Time Bound Promotion from the dates on which they completed 12 years of service or Civil Engineering Assistant were exempted from passing the professional examination is also upheld.

6. Consequently, order of the Respondent no. 1 dated 4.2.2014 is quashed and set aside and the Original Application is allowed accordingly.

7. In O.A no 373/2014, the Applicants were absorbed as Civil Engineering Assistants on 7.6.1995, 1.4.2005, 1.4.2005 and 1.6.2005 respectively. They were granted exemption from passing professional examination by order dated 8.11.2013 issued by the Respondent no. 3 (Annexure A-5, page 70). The Applicant no. 1 was granted Time Bound Promotion in the pay scale of Junior Engineer from 28.9.2010, i.e. from the date on which he was exempted from passing the qualifying examination. On that date, he

had already completed more than 12 years in the post of Civil Engineering Assistant.

8. The Applicant no. 2 was absorbed as Civil Engineering Assistant on 1.4.2005. He was given exemption from passing qualifying examination on 9.6.2005. He could be granted Time Bound Promotion only after completion of 12 years as Civil Engineering Assistant. He could not have been granted Time Bound Promotion from 9.6.2005. The order dated 17.12.2013 appears to be flawed.

9. The Applicant no. 3 was granted exemption from passing qualifying test on 23.3.2009. He was absorbed as Civil Engineering Assistant on 1.4.2005. He could not have been granted Time Bound Promotion before completion of 12 years as Civil Engineering Assistant. Order dated 17.12.2013 is defective and cannot be upheld.

10. Similarly, the Applicant no. 4 has to complete 12 years as Civil Engineering Assistant before he becomes eligible for Time Bound Promotion and order dated 24.1.2014 cannot be upheld.

11. As a result, only the Time Bound Promotion of the Applicant no. 1 is found to be valid. Other three Applicants are not eligible to get Time Bound Promotion before they complete 12 years of service as Civil Engineering Assistant.

12. This is the view taken by the Nagpur Bench of this Tribunal by judgment dated 11.8.2017 in O.A nos 317

and 426 of 2014. A Civil Engineering Assistant has to work for a minimum of 3 years before he become eligible for promotion as Junior Engineer. However, just because a person becomes eligible for promotion does not mean that he has to be promoted. The very basis of Time Bound Promotion is that an employee, despite being eligible for promotion, cannot be promoted as there are no vacancies available. So a Civil Engineering Assistant can be promoted as Junior Engineer after 3 years, if vacancy is available to promote him. However, if no vacancy is available, he has to work for 12 years, before he can be given Time Bound Promotion in the scale of Junior Engineer. This Original Application is allowed only in respect of Applicant no. 1 and dismissed in respect of Applicants no. 2 to 4.

13. O.A no 539/2014 was filed by the Applicant, who has since died and his legal representatives have been brought on record. The Applicant was working as Civil Engineering Assistant. The Applicant was absorbed as Civil Engineering Assistant on 31.1.1989. The Applicant was given exemption from passing professional examination by order dated 8.1.2014 retrospectively from the date on which he attained the age of 45 years.

14. On careful scrutiny of case papers, we are unable to find the date of birth of the Applicant. However, at the time of filing the Original Application, he was stated to be 73 years old. He must have retired sometime around 1999 or so. He was appointed as Civil Engineering Assistant in the year 1989. He must have attained the age of 45 years in the year

1986 or so. Another fact which may be relevant in this case is that before he was absorbed as Civil Engineering Assistant, he was working as Overseer and in terms of G.R dated 31.1.1989, it was a post on which a person working was immediately absorbed as Civil Engineering Assistant. The Applicant's eligibility to get Time Bound Promotion in terms of G.R dated 8.6.1995 on completion of 12 years of service as Overseer/Civil Engineering Assistant will have to be examined afresh. The Applicant appears to be eligible to get exemption from passing professional examination from the date on which he attained 45 years of age, which was probably in the year 1986. This Original Application is disposed of with the direction that the case of the Applicant will be reopened and orders granting him Time Bound Promotion, strictly in accordance with G.R dated 8.6.1995 will be issued. This should be done within 3 months from the date of this order.

15. In O.A no 147/2015, the Applicant no. 1 was appointed as Civil Engineering Assistant on 12.4.2005, the Applicant no. 2 on 1.6.2005 and the Applicant no. 3 on 27.3.1985. They were given exemption from passing the professional examination for promotion to the post of Junior Engineer on attaining the age of 45 years, on 11.2.2011, 11.6.2011 and 4.4.2008 respectively. The Applicants no 1 & 2 were granted Time Bound Promotion in the pay scale of Junior Engineer w.e.f 1.7.2011. However, on that date, they had not completed 12 years of service as Civil Engineering Assistant and were not eligible to be given Time Bound Promotion in terms of G.R dated 8.6.1995 or 30.7.2001 unless they complete 12 years of service as Civil Engineering

Assistant. However, the Applicant no. 3 has completed 12 years of service on 4.4.2008, when he was granted exemption from passing the professional examination. Original Application is, therefore, allowed in respect of Applicant no. 3, but dismissed in respect of Applicants no 1 & 2.

16. These Original Applications are disposed of accordingly with no order as to costs.

Sd/-
(B.P Patil)
Member (J)

Sd/-
(Rajiv Agarwal)
Vice-Chairman

Place : Aurangabad
Date : 16.08.2017
Dictation taken by : A.K. Nair.