

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 139/2018 (S.B.)

Sunil S/o Yashwant Gawai,
Aged about 57 years, Occ. Service,
R/o Bhim Nagar, Borgaonmanju,
Tq. & Distt. Akola.

Applicant.

Versus

- 1) State of Maharashtra,
through the Secretary, Irrigation Department,
Mantralaya, Mumbai-400 032.
- 2) Superintending Engineer,
Akola Irrigation Circle, Akola,
Near Collectorate, Akola,
Tq. & Distt. Akola.
- 3) Executive Engineer,
Akola Irrigation Division,
Murtizapur Road, Akola,
Tq. & Dist. Akola.

Respondents.

**Shri C.A., Mrs. R.C., and S.C. Joshi, R.M. Tiwari, Advocates for
the applicant.**

Shri H.K. Pande, P.O. for the respondents.

**Coram :- Hon'ble Shri Anand Karanjkar,
Member (J).**

Date of Reserving for Judgment : 7th August, 2019.

Date of Pronouncement of Judgment : 21th August, 2019.

JUDGMENT

(Delivered on this 21th day of August,2019)

Heard Shri R.M. Tiwari, learned counsel for the applicant and Shri H.K. Pande, learned P.O. for the respondents.

2. It is case of the applicant that in year 1980 he was appointed as Technical Assistant. On 1/10/1994 first time bound promotion was given to the applicant and he was given pay scale admissible to the post of Civil Engineering Assistant (CEA). Thereafter on 1/10/2006 second time bound promotion was given to the applicant and his salary was fixed at a next stage in the pay scale admissible to the post of Civil Engineering Assistant.

3. It is grievance of the applicant that on completion of 12 years service as Technical Assistant the applicant was entitled to the pay scale admissible to the post of Junior Engineer but it was not given and for this purpose the applicant has placing reliance on the letter/circular dated 18/6/1998 written by the Deputy Secretary Irrigation Department, Government of Maharashtra.

4. It is submission of the applicant that on 6/6/2017 letter was written by the Executive Engineer to the Superintending Engineer to grant pay scale of the Junior Engineer to the applicant, but it was informed by the Superintending Engineer that as applicant was absorbed as Civil Engineering Assistant on 30/4/2008, therefore, it was not permissible. It is submitted on behalf of the applicant that this

action of the Superintending Engineer is illegal and it is in violation of the circular dated 18/6/1998.

5. In support of the submissions the learned counsel for the applicant has placed reliance on the Judgment in Writ Petition No. 3815/2012 with 3466/2012 & 3807/2012, decided on 29th August, 2013 between **Subhash S/o Ambadas Cheke Vs. Maharashtra Jeevan Pradhikaran & Ors.** The applicant has also invited attention to the Judgment in Writ Petition No. 5185/2014, decided on 8/6/2015 between **Namdeo Baliram Paikrao & Ors. Vs. Maharashtra Jeevan Pradhikaran, Mumbai & Ors.** It is submitted by the applicant that in both the Writ Petitions it is laid down by the Hon'ble Division Bench of the Bombay High Court that the Technical Assistants on completion of 12 years service, shall be entitled to the pay scale admissible to the post of Junior Engineer as per the circular dated 18/6/1998. According to the applicant, without considering this legal position, relief is not granted to him and consequently it is prayed by the applicant to issue direction to the respondents to give the pay scale admissible to the post of Junior Engineer to the applicant w.e.f. 1/10/1994 and quash the order dated 17/11/2017 passed by the respondent no.2 the Superintending Engineer.

6. The application is opposed by the respondent no.3 mainly on the ground that the applicant was granted first promotion as per

Assured Progressive Scheme w.e.f. 1/10/1994 and the second benefit under Assured Progressive Scheme was given to the applicant on 1/10/2006, therefore, the applicant can't claim third time bound promotion. It is contention of the respondents that the applicant was not eligible to be promoted on the post of Junior Engineer as the departmental examination was not cleared by the applicant, therefore, he was not entitled for the benefit. It is submitted that as per the G.R. dated 16/9/2016 decision was taken by the Department vide order dated 15/12/2016 to exempt the applicant from passing the examination as he had crossed the age of 45 years. It is submitted that to claim the pay admissible to the post of Junior Engineer as per the first and second time bound promotion scheme, it was necessary for the applicant to clear the examination and as it was not done, therefore, action of the respondents is justified.

7. After going through the averments made in the application, it is clear that as per the provisions of Assured Progressive Scheme the first benefit was given to the applicant w.e.f. 1/10/1994. It must be remembered that though the reliance is placed by the applicant on circular dated 18/6/1998, but when first time bound promotion was given to the applicant on 1/10/1994 this circular was not in existence.

8. As a matter of fact, it seems that by issuing G.R. on 8/6/1995 it was decided by the Government of Maharashtra, GAD to

give a promotional pay scale to the Government servants in Group-C&D who were eligible for promotion, but could not be promoted for vacancy of the promotional posts or there was no promotional avenue. As per the scheme formulated in this G.R. first benefit was given to the applicant w.e.f. 1/10/1994. As per Clause-B in this G.R. in order to claim the higher pay scale admissible to the promotional post, the concerned Government servant shall possess the eligibility and he must have passed the required qualifying examination and departmental examination. The Clause-B is as under –

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9. The learned P.O. has invited my attention to the Notification dated 9/11/1998. By this Notification the rules applicable to the Public Works Department were amended, the Rule-3 was amended and the following portion was substituted in the Rule –

~¼v½ i qhy 0; Drhrmu ; kk; rP; k v/khu I okt sBrum kj i nkblurhus&
 ¼, d½ LFkk i R; vfHk; kf=dh I gk; d gs in /kkj.k dj.kk&; k o R; k i nkojhy rhu o"kkī {kk deh u l sy brdh fu; fer I ok T; kauh i wkZd ssys h vkgsvkf.k vfHk; kf=dh vf/kdkjh egkfo?kk; ; kP; kdMmu ?ks; kr ; skljh dfu" B vfHk; ark ; k i nkph vgrkd kjh i jh {kk t smRrh.kz>kysysvkg s} fdok **

10. After reading the original application one thing is certain that the applicant himself admitted that he never passed the departmental examination which was necessary to claim the post of Junior Engineer and when the applicant completed age of 45 years

then vide order dated 15/12/2016 the applicant was exempted from passing the examination for the post of the Junior Engineer.

11. Thus in view of the facts that benefit of first time bond promotion was given to the applicant by virtue of G.R. dated 8/6/1995 and at that time as the applicant had not cleared the required examination, therefore, he was not eligible to claim the post of Junior Engineer and consequently not eligible to claim the pay scale admissible to the post of Junior Engineer. Even when the second time bound promotion was given to the applicant, at that time also such examination was not cleared by the applicant. The applicant never passed that examination and when he completed the age of 45 years, he was exempted from passing the examination.

12. After reading the G.R. dated 8/6/1995 it seems that two benefits were already given to the applicant before passing the examination and before he became eligible to claim the post of Junior Engineer, after crossing the age of 45 yrs. As per the rules the Government servant in Group-C&D cannot claim benefit of time bound promotion more than twice. In view of this now I would like to consider whether on the basis of the Judgment delivered by the Hon'ble Bombay High Court on which reliance is placed by the applicant, relief can be granted to the applicant.

13. After reading the Judgments in both the Writ Petitions, it is clear that in the said Writ Petitions, it was not contention of the respondents/ Government that the Writ Petitioners had not cleared the required departmental examination and therefore it was not issue before the Hon'ble High Court. The Hon'ble High Court decided the issue whether on completion of 12 years of service from initial appointment in the cadre of Technical Assistant, the Petitioners were eligible to claim the pay scale admissible to the post of Junior Engineer by virtue of circular dated 18/6/1998. In this regard I would like to point out that the circular dt/ 18-6-1998 was in fact corollary to the G.R. dt/8-6-1995. In this circular it is specifically mentioned that it was issued to clarify the misunderstanding, whether the service on work charged establishment should be considered for calculating the period of 12 years service, while giving benefit of time bound promotion.

14. In the present case it is specifically contended by the respondents that as the applicant never passed the departmental examination as prescribed in the rules for claiming the post of Junior Engineer and this was a condition precedent as per the G.R. dated 8/6/1995 and therefore on the basis of Judgment delivered by the Hon'ble High Court in Writ Petition Nos. 3815 of 2012 and 5185 of 2014 the applicant is not entitled to claim any relief w.e.f. 1/10/1994. It

must be remembered that the G.R. dated 8/6/1995 is issued by the GAD and it is binding on all other departments of the Government of Maharashtra, therefore, as the applicant did not clear the examination when two benefits were granted to him, consequently the applicant is not entitled for the reliefs claimed in the application. Hence, the following order -

ORDER

The O.A. stands dismissed with no order as to costs.

Dated :- 21/08/2019.

(A.D. Karanjkar)
Member (J).

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I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 21/08/2019.
and pronounced on

Uploaded on : 23/08/2019.