

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 241 OF 2008 (D.B.)

Shri Rajkumar S/o Eknathji Gajbhiye,
Aged about : 49 years, Occ. Service, R/o 19,
Jetawan Housing Society Shashtri Layout, Kamla Road,
Nagpur-25.

Applicant.

Versus

- 1) State of Maharashtra,
Through its Secretary Higher,
Technical Education,
Mantralaya, Mumbai-32.
- 2) Department of Technical,
Education Government of
Maharashtra, Mumbai.
- 3) Shri R.P.Mogre, Principal,
Government Polytechnic,
Usmanabad.
- 4) Shri S.R.Thute, Principal,
Government Polytechnic,
Jintur, Distt. Parbhani.
- 5) Shri P.R.Pattalwar, Principal,
Government Polytechnic,
Ratnagiri.
- 6) Shri A.A.Gulhane, Principal,
Government Polytechnic,
Khamgaon, Distt. Akola.

- 7) Maharashtra Public Service Commission,
Through its Secretary,
Bank of India Building,
Mahatma Gandhi Road, Mumbai.

Respondents

Shri N.D.Thombre, the Id. Adv. for the applicant.

Shri P.N.Warjurkar, the Id. P.O. for the respondent nos. 1 & 2.

Shri D.T.Shinde, the Id. counsel for respondent nos. 3 to 6.

**Coram :- Hon'ble Shri J.D. Kulkarni, Vice-Chairman (J) and
Hon'ble Shri Shree Bhagwan, Member (A)**

JUDGMENT

(Delivered on this 27th day of April, 2018)

ORDER

PER:-VICE CHAIRMAN (J)

Heard Shri N.D.Thombre, the learned counsel for the applicant, Shri P.N.Warjurkar, the learned P.O. for the respondent nos. 1, 2 and Shri D.T.Shinde, the Id. counsel for respondent nos. 3 to 6.

2. The applicant in this O.A. is claiming the promotion granted to respondent nos. 3 to 6, vide order dated 20/05/2008 to the post of Principal, Government Polytechnic be quashed and set aside and the respondents be directed to promote the applicant on the said post and also to grant him consequential benefits arising out of such promotion.

3. The applicant was appointed by nomination as a Lecturer in Mechanical Engineering, through Maharashtra Public Service

Commission vide G.R. dated 19/08/1985 and is working on the said post since 17/09/1985. Thereafter, he was nominated to the post of Head of the Department (Mechanical Engineering) vide G.R. dated 23/08/1991 and is working as a Head of the Department since 17/09/1991.

4. According to the applicant, the respondent no. 1, vide G.R. dated 20/05/2008, promoted respondent no. 3 to 6 to the post of Principal, Government Polytechnic though they are Junior to the applicant. Thus, the respondent nos. 3 to 6 have been illegally promoted though the applicant was eligible for the said post and was senior to them and, therefore, this O.A. The respondent nos. 1 and 2 justified the promotion of respondent nos. 3 to 6. According to them, the required qualification to the post of Principal as per recruitment rules notified on 09/11/1993 is Master's Degree in Engineering. The applicant possesses only Bachelor's Degree of Engineering. According to the respondents, cadre of Polytechnic Teachers and Administrative Service Cadre was holding heterogeneous posts i.e. the posts of Polytechnic Teachers and those of Administrative Officer whereby bifurcated vide G.R. dated 09/09/2004 and, therefore, new recruitment rules were under consideration. The draft recruitment rules were finalized vide notification dated 28/08/2008. The required qualification for the post of Principal as per old as well as new recruitment rules remains the same i.e. Master's Degree in Engineering. The applicant does not possess

Master's Degree in Engineering and, therefore, he is not eligible to be promoted to the post of Principal.

5. It is further stated by the respondents that the teaching staff (Lecturer/ Head of the Department/Principal) appointed prior to 20/09/1989, were exempted from acquiring qualification for the benefit of revised pay scale under Career Advancement Pay Scheme and promotions to the higher posts vide G.R. dated 30/09/1994. Further under new guidelines, the teachers were required to acquire the revised qualification within 5 yrs. to be eligible for promotions to the higher posts. The applicant did not acquire the requisite qualification and, therefore, the applicant was not considered for promotion. As against these, the respondent nos. 3 to 6 have acquired requisite qualification and though they are Juniors to the applicant, they are qualified to be promoted as per recruitment rules.

6. The respondent nos. 3 to 6 have also filed affidavit-in-reply and justified their promotion.

7. The Id. counsel for the applicant submits that the case of the applicant was recommended for promotion on earlier two occasions, but he was not considered and all of a sudden his case was not recommended on the 3rd occasion also.

8. From the admitted fact on record, it seems that as per seniority list of Head of the Departments as on 01/01/2006, the

applicant stand at seniority no. 39, whereas the respondent nos. 3 to 6 stand at seniority no. 43, 45, 46 and 47 respectively and, therefore, the applicant is senior in the seniority list. The Id. counsel for the applicant has invited our attention to the recommendation vide letter dated 14/06/2005 (Annexure-A-I) at P.B., Pg. No. 157 to 164 (both inclusive) and letter dated 05/06/2007 (Annexure-A-II), P.B., Pg. No. 165 to 177 (both inclusive). Vide both these letters, the applicant's name was recommended for the post of Head of the Department. However, he invited our attention to another letter dated 04/12/2007 which is at P.B., Pg. No. 185, whereby the applicant's name was not recommended. It is further submitted that there was absolutely no reason for not recommending the applicant's name for promotion.

9. The Id. counsel for the applicant also invited our attention to the communication dated 10/01/2008, a copy of which is at P.B., Pg. No. 192 to 194 (both inclusive) whereby it was intimated to the Government by the incharge, Director of Technical Education, Maharashtra State, Mumbai that the applicant is not eligible for the post of Principal. We have proceeded the said letter from which it seems that the Government was intimated that as per the recruitment rules for promotion to the post of Principal the Master's Degree in relevant branch of Engineering was necessary. It was intimated that the applicant is not eligible for the promotion and, therefore, he cannot be considered.

10. According to the Id. counsel for the applicant, earlier number of persons who are having qualification of Master Degree, were promoted. However, in this case, it seems that prior to the amended rules and under particular circumstances there was shortage of qualified candidates and, therefore, as a special case some were promoted temporarily.

11. In short, we find that the applicant wants to say that since some persons were earlier promoted though qualified than him and he should have also been promoted. It seems that the earlier two recommendations to promote the applicant were not considered by the competent authority. However, when the charge of Director was kept temporarily to respondent no. 2, he noticed that the applicant was not at all qualified for being considered for promotion and, therefore, he brought this fact to the notice of the Government. Even accepting that some non-qualified persons were earlier promoted, it does not mean that the applicant shall also be promoted, though he is not qualified.

12. The recruitment rules known as under:-

“The Principal of Government Polytechnic, Deputy Director of Technical Education and Secretary, Board of Technical Examination, Head of Departments of Engineering and Technology subjects in Government Polytechnics, Training and Placement Officer, Deputy Secretary-Board of Technical Examination and Assistant Director of Technical Education (Technical), Lecturers in Engineering and Technology subjects in Government Polytechnic and Controller of Examination of Board of Technical Examination, Inspector of Technical Education, Workshop Superintendent in Government Polytechnics, and Lecturers in Physics, Chemistry, Mathematics and English in the Government Polytechnics, in Maharashtra Engineering Teachers and Administrative Service in Class-I, Class-I (Senior), Class-I (Junior) and Class-II

respectively under the Directorate of Technical Education in the Higher and Technical Education and Employment Department (Recruitment), Rules, 1993." (hereinafter referred to as "Rules of 1993")

We have perused the rules of 1993 and particularly rule 3 which is a rule for appointment to the post of Principal. The said rules read as under :-

(3) "Appointment to the posts 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 yrs. 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 yrs.

(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 acquiring the qualification 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 qualification or experience or both

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

13. Admittedly, the applicant did not possess Master Degree in the relevant subject and as per Recruitment Rules as aforesaid, the Master's Degree is necessary for promotion. The applicant also does not dispute that he is not qualified for the promotion. His only say is that since earlier some of the officers having no requisite qualification, were

promoted, therefore, he should have been promoted. It is also his submission that on two occasions, his name was not recommended and on 3rd occasion; his name was not recommended and, therefore, he should be promoted. This argument cannot be accepted while dealing with the promotion matters. The competent authority has to consider the requisite recruitment rules and as per the recruitment rules the applicant is not eligible at all for being promoted. It is clear that, even though the respondent nos. 3 to 6 were junior; they are having requisite qualification for promotion and, therefore, they have been considered for promotion and, therefore, we do not find any illegality in their promotions. In view of the discussion in forgoing paras, we are, therefore, satisfied that there is no merits in the O.A. and hence the following order:-

ORDER

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

(Shree Bhagwan)
Member (A)

(J.D.Kulkarni)
Vice Chairman (J)

Dated :- 27/04/2018

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