

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI, BENCH NAGPUR**

ORIGINAL APPLICATION NO 645 OF 2015

DISTRICT : NAGPUR

1. Shri Lalit s/o Murari Khobragade)
 2. Shri Pu-rushottam G. Raut)
 3. Shri Rajay N. Sable)
 4. Shri Kiran S. Raut.)
 5. Shri Rajankumar M. Gajbhiye)
 6. Shri Narendra J. Khobragade)
 7. Shri Pramod P. Dhanke)
 8. Shri Ravindra P. Bansod)
 9. Shri Thonte G. Kashinathappa)
 10. Shri Kishor V. Gokhale)
 11. Shri Rameshwar P. Ghate)
 12. Shri Mukund B. Bute)
- C/o: Shri S.P Kshirsagar, Advocate)
for the Applicants, M.A.T, Nagpur.)...**Applicants**

Versus



1. The State of Maharashtra)
Through the Secretary,)
Urban Development Department)
Mantralaya, Mumbai 400 032.)
2. The Director,)
Town Planning Department,)
State of Maharashtra, Central Bldg.)
Pune 411 001.)
3. Maharashtra Public Service)
Commission, through its Chairman)
5 ½, 7th & 8th floor, Cooperage)
Telephone Exchange Bldg,)
M.K Marg, Cooperage,)
Mumbai 400 021.)...**Respondents**

Shri S.P Kshirsagar, learned advocate for the Applicants.

Smt M.A Barabde, learned Presenting Officer for the Respondents.

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

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

DATE : 10.03.2017

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

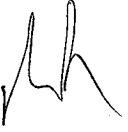
ORDER

1. Heard Shri S.P Kshirsagar, learned advocate for the Applicants, Shri H.K Pande, learned Presenting Officer for the Respondents.
2. This Original Application has been filed by the Applicants who are working as Assistant Town Planners and who are challenging the recommendations made by the Respondent no. 3 pursuant to the advertisement dated 4.7.2015 for the post of Town Planner, Group-A.
3. Learned Counsel for the Applicants stated that the Recruitment Rules for the post of Town Planner was notified in the year 1984. As per these rules, appointment to the post of Town Planner can be made either by promotion or by nomination. For those who are already working in the Government no upper age limit was prescribed under the Rules. Learned Counsel for the Applicants stated that the Government has a scheme of sending Assistant Town Planners for taking Degree of M. Tech in Town Planning at Government expense. For sending employees for the said course, the upper age limit was fixed at 45 years by G.R dated 3.2.2010. However, by another G.R dated 10.6.2014, the age limit has been done away with and it has been stated that if a candidate after acquiring M. Tech degree has 3 years of service left, he can be sent for that training which

indicates that a person who is 53 years old can also be sent for M. Tech course at Government expense. Learned Counsel for the Applicants stated that on one hand Government is encouraging its employees to acquire educational qualifications up to the age of 53 years, on the other hand unnecessary restrictions are being placed for appointment to the post of Town Planner by nomination by giving 5 years of relaxation to the in-service candidates from the upper age limit of 38 years, which has been done by notifying fresh Recruitment Rules for various posts in the Town Planning Department by Notification dated 1.8.2011. Learned Counsel for the Applicants stated that the advertisement issued by Respondent no. 3 on 4.7.2015 severely infringes upon existing legal rights of the Applicants and amounts to illegal restriction on the part of the Respondent no. 1 and it may be quashed and set aside. Any appointment made on the basis of selection process under this advertisement which barred the Applicants from participating in the selection process may also be cancelled.

4. Learned Presenting Officer stated that the purpose of G.R dated 3.2.2010 promoting employees to acquire higher technical qualification at Government expense is to upgrade the skills of the employees. It does not mean nor is it provided anywhere that only those who have M. Tech qualification will be considered for

appointment to the post of Town Planner by promotion or by nomination. There is no nexus between that G.R and appointment to the post of Town Planner. Learned Presenting Officer stated that by Notification dated 1.8.2011, the previous Recruitment Rules for various posts in the Town Planning Department have been superseded and new Rules have been framed under proviso to Article 309 of the Constitution of India. These Rules provide that appointment to the post of Town Planner may be made by promotion or by nomination. The Applicants should not have any grouse as for promotion no upper age limit has been provided and the avenue is open to the Applicants to be appointed as Town Planner by promotion. For appointment by nomination, upper age limit of 38 years is provided for open category candidates, who are not in Government service and the same is relaxation by 5 years for Government servants. Learned Presenting Officer stated that the Applicants cannot challenge the powers of the Government to amend the Recruitment Rules. The Government has decided to induct fresh blood at various levels in the Town Planning Department and has prescribed age limit for such appointment accordingly. Some concession has been given to the existing employees. However, they cannot claim that existing employees should be considered for appointment by nomination regardless of their age. There is no legal basis for that.



5. We find that the Applicants are challenging the new Recruitment Rules framed under Art. 309 of the Constitution of India and notified on 1.8.2011. Rules of 1984 have been superseded. For appointment to the post of Town Planner, earlier there was no upper age limit for in-service candidates. However, now such candidates in the open category can be considered for appointment by nomination only by granting them age relaxation upto 5 years as compared to other candidates, who are not in the Government. The claim of the Applicants, if accepted, will mean that the Government will not be able to amend any Recruitment Rules as any such amendment is bound to adversely affect some section of the employees. This proposition is not tenable. Government has full authority to amend the Recruitment Rules depending upon the requirement of changing times. It is a policy decision of the Government which is not susceptible to interference by Courts or Tribunals. It is not that the avenue of getting appointment as Town Planner is totally closed in so far as the Applicants are concerned. They can get such appointment by way of promotion. However, for appointment by nomination, if the policy decision has been taken by the Government to prefer younger persons, there is nothing wrong or arbitrary about that. We are not convinced that this is a case requiring interference by this Tribunal.



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

sd/-

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

sd/-

(Rajiv Agarwal)
Vice-Chairman(A)

Place : Mumbai

Date : 10.03.2017

Dictation taken by : A.K. Nair.

F:\MARCH 2017 JUD NAGPUR\Challenge to compulsory retirement notice.
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