

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO. 540/2016

1. Krishna s/o Bhikaji Kulkarni, **(Dead)**
Aged about 61 years, Occ –Pensioner,
R/o Tulai Sadan, Kharap Road,
New Tapadia Nagar, Akola. **Applicant.**
LRs of applicant No.1

- 1-a.Smt. Sulbha wd/o Krushna Kulkarni,
Aged about 61 years, Occ –Household,
- 1-b.Ku. Renuka d/o Krushna Kulkarni,
Aged about 31 years, Occ –Private service,
- 1-c. Sou. Rohini w/o Abhijit Bhalkar,
Aged about 28 years, Occ –Household,
- 1-d. Shri Vivek s/o Krishna Kulkarni,
Aged about 26 years, Occ –Private service,

All residents of r/o Tulai Sadan, Kharap Road,
New Tapadia Nagar, Akola.

2. Rameshwar Ganpat Suryawanshi,
Aged about 61 years, Occ-Pensioner,
R/o Mehenge Nagar, Ring Road, Akola.
3. Ashok s/o Wasudeo Sawarkar,
Aged about 63 years, Occ-Pensioner,
R/o Amboda, Post-Akolkhed,
Tq. Akot, Distt. Akola. **Applicants.**

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Public Works,
Mantralaya, Mumbai-400 032.

2) The Superintending Engineer,
Public Works Circle,
Gorakshan Road, Akola.

3) The Executive Engineer,
Public Works Division,
Near Collectorate, Akola.

Respondents

Shri C.A. Joshi, Ld. counsel for the applicants.

Shri M.I. Khan, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri M.A. Lovekar, Member (J).

Dated: - 24th January 2022.

Heard Shri C.A. Joshi, learned counsel for the applicants and Shri M.I. Khan, Ld. P.O. for respondents.

2. **Facts in brief-**

At the relevant point of time, the applicants were working as Civil Engineering Assistants. The next promotional post to which they could aspire was that of Junior Engineer. They had completed 45 years. Hence, they were entitled to get exemption from departmental examination to qualify for the post of Junior Engineer. They raised this grievance in O.A. No.224/2014 before this Tribunal. During the pendency of O.A. No.224/2014, their pay was fixed by respondent No.3 as per Annexures A-2, A-3 and A-4 respectively. These orders were passed on 4.10.2014 / 8.10.2014. While passing these orders, it was recognized that because the

applicants had completed 45 years, they were entitled to get exemption from passing departmental examination. From the relevant date, they were granted scale of Junior Engineer. Benefits of 6th Pay Commission were also granted accordingly. Thus, during the pendency of O.A. No. 224/2014, grievance of the applicants was substantially redressed. In addition, they prayed for passing formal order of their promotion to the post of Junior Engineer. This Tribunal observed that orders dated 4.10.2014 / 8.10.2014 were nothing but the orders promoting the applicants as Junior Engineer. By observing thus, O.A. No. 224/2014 was disposed of on 27.4.2015. On 10.8.2015, respondent No.3 passed orders (Annexure A-8, A-9 and A-10) re-fixing pay of the applicants. This re-fixation had the effect of reducing pay of the applicants. Therefore, the applicants filed Contempt Petition (Stamp) No. 1806/2015 before this Tribunal. It was rejected by order dated 29.10.2015 on the ground that order dated 27.4.2015 passed in O.A. No. 224/2014 did not contain any directive. The Tribunal, however, gave liberty to the applicants to file review / fresh application as deemed fit. Order of this Tribunal dated 29.10.2015 was maintained by the Hon'ble Bombay High Court in W.P. No. 1374/2016. Hence, this application impugning the orders at Annexure A-8, A-9 and

A-10, and for fixation of pay of the applicants as per Annexures A-2, A-3 and A-4.

3. While fixing pay of the applicants as per Annexures A-2, A-3 and A-4, benefit of exemption from passing departmental examination was extended and from the date on which they became entitled to such exemption (i.e. the date on which they had completed 45 years) scale of Junior Engineer was granted to them. In paras 3 and 5 of the judgment in O.A. No.224/2014, this Tribunal observed--

“3. During the course of hearing of this O.A., on behalf of the respondents, orders granting exemptions from passing the C.E.A. examination, have been brought on the record at Annexure A-16 to A-19. Apart from granting exemption, they have been brought in the scale of Junior Engineer with relevant date. They have also been granted benefit of 6th Pay Commission. There are directives to fix their pay in the scale admissible to the post of Junior Engineer and with retrospective effect. In this view of the matter, grievance of the applicants does not survive.

5. Phraseology used in the orders Annexure A-16 to A-19 clearly spells out that the applicants have been exempted from passing the qualifying examination, since they attained the

age of 45 years. Since the date when they are exempted from passing the said examination, they have been ordered to be brought in the scale admissible to the Junior Engineers. Not only this, it has been ordered to pay the amount of difference in salary due to the applicants. Plain reading of the orders would suggest that because the applicants were promoted to the post of Junior Engineer, the pay scale admissible to the said post has been granted to them. There cannot be a pay scale without post or *vice-versa*. Therefore, insistence on the part of the learned counsel for the applicants that there has to be formal order of promotion, is significant. Orders Annexure A 16 to A-19 are nothing but the orders promoting the applicants as Junior Engineers.”

It may be observed that the order referred to in para 5 are at Annexure A-2 to A-4 in this O.A.

It may also be observed that the prayer of the applicants to pass formal order of their promotion to the post of Junior Engineer was not acceded to, because the Tribunal had interpreted the orders passed during the pendency of the O.A. as

orders promoting the applicants to the post of Junior Engineer. Once such determination was made by the Tribunal, all that remained to be done was giving effect to it.

It is not in dispute that the order dated 27.4.2015 passed in O.A. No.224/2014 had attained finality for want of challenge to it before higher Court. If the respondents were aggrieved by judgment dated 27.4.2015 passed by this Tribunal in O.A. No.224/2014, it was for them to challenge it in the High Court.

4. According to the applicants, respondent No.3 did not give any reason while passing the impugned orders and on this ground alone, the impugned orders will have to be quashed and set aside.

5. Affidavit-in-reply filed by respondent Nos. 2 and 3 is at pages 160 to 168. According to these respondents, para 5 of Annexure R-1 will falsify assertion of the applicants that the impugned orders were totally unfounded. Annexure R-1 (Page 169) is letter dated 12.2.2015 issued by deputy Secretary (Establishment) to all Superintending Engineers, P.W. Circles. According to the respondents, in this letter, certain illustrations were given as to how Time Bound Promotion / Assured Progressive Scheme was to be given and implemented while granting pay scale of Junior Engineer to the Civil Engineering Assistants on completion of age of 45

years. Attention of this Tribunal was drawn to illustration-5 which reads as under:-

“कर्मचारी-ई :-जन्मदिनांक २.६.१९४५, प्रथम नियुक्तीचे पदनाम- हजेरी लिपिक, शासन सेवेतील नियुक्तीचा दिनांक २७.७.१९७४, वयाची ४५ वर्षे पूर्ण केल्याचा दिनांक २.६.१९९०, या कर्मचाऱ्याचे दिनांक २.६.१९९० रोजी स्थापत्य अभियांत्रिकी सहायक या पदावर समावेशन होईल व कनिष्ठ अभियंता या पदास दिनांक २.६.१९९३ रोजी पात्र राहिल, तथापि, या पदाची वेतनश्रेणी त्याला दिनांक २।६।१९९० पासून १२ वर्षांनी म्हणजेच दिनांक २.६.२००२ पासून अनुज्ञेय राहिल”.

According to respondent Nos. 2 and 3, as per afore-quoted illustration which was applicable to the applicants, their pay was re-fixed as per Annexure A-8, A-9 and A-10 and hence it cannot be faulted.

6. The respondents have relied on the following—

(i) G.R. dated 31.7.2013 (R-3) issued by Government of Maharashtra which laid down-

“शासन निर्णय

माननीय न्यायाधिकरणचे वरील आदेश, सामान्य प्रशासन विभागाच्या उपरोक्त दिनांक २८.११.१९७९ च्या शासन निर्णयान्वये व दिनांक ४.१२.२००८ च्या परपत्रकान्वये निर्गमित केलेले आदेश विचारात घेऊन सार्वजनिक बांधकाम विभागातील स्थापत्य अभियांत्रिकी सहायकांना कनिष्ठ अभियंता पदावरील पदोन्नती / कालबद्ध पदोन्नती / आश्वासित प्रगति योजनेचा लाभ मिळण्यासाठी त्यांच्या वयाची ४५ वर्षे पूर्ण झाल्यानंतर कनिष्ठ अभियंता पदावरील पदोन्नतीसाठीची परीक्षा उत्तीर्ण होण्यापासून सूट देण्यात येत आहे. त्यानुसार, संबंधित नियुक्ती प्राधिकाऱ्यांनी / अधीक्षक अभियंत्यांनी पात्र कर्मचाऱ्यांना सूट देण्याची कार्यवाही तात्काळ करावी. तदनंतर पात्र कर्मचाऱ्यांना पदोन्नती / सेवांतर्गत आश्वासित प्रगति योजनेचा लाभ नियमानुसार देण्याची कार्यवाही करावी.”

(ii) By communication dated 5.12.2014 (R-2), respondent No.2 communicated to all the concerned as follows-

“विषय:- स्थापत्य अभियांत्रिकी सहाय्यकांना कनिष्ठ अभियंता पदावर पदोन्नती अथवा कालबद्ध पदोन्नती देताना वयाची ४५ वर्षे पूर्ण झाल्यामुळे अर्हता परीक्षेतून सूट मिळणेबाबत.

उपरोक्त विषयाच्या अनुषंगाने शासनाचे संदर्भ क्रमांक ४ च्या पत्राची प्रत संलग्न करण्यात आहे. कृपया त्याचे अवलोकन करावे. संदर्भ क्रमांक १ चे शासन निर्णयानुसार स्थापत्य अभियांत्रिकी सहाय्यकांना कनिष्ठ अभियंता पदावर पदोन्नती अथवा कालबद्ध पदोन्नती देताना वयाची ४५ वर्षे पूर्ण झाल्यामुळे अर्हता परीक्षेतून सूट मिळणेबाबतचा निर्णय झाला आहे. त्या अनुषंगाने शासनाने वरील संदर्भ क्रमांक २ व ३ च्या पत्रानुसार स्थापत्य अभियांत्रिकी सहाय्यकांना कनिष्ठ अभियंता पदावर पदोन्नती अथवा कालबद्ध पदोन्नती देताना वयाची ४५ वर्षे पूर्ण झाल्यामुळे अर्हता परीक्षेतून सूट मिळणेबाबत मार्गदर्शन करण्यात आले होते. शासनाच्या वरील संदर्भ क्रमांक २ व ३ च्या पत्रानुसार या मंडळाने कार्यवाही करून संदर्भ क्रमांक ६ ते १० च्या आदेशानुसार स्थापत्य अभियांत्रिकी सहाय्यकांना कनिष्ठ अभियंता पदावर पदोन्नती अथवा कालबद्ध पदोन्नती देताना वयाची ४५ वर्षे पूर्ण झाल्यामुळे अर्हता परीक्षेतून सूट देण्यात आलेली आहे.

तथापि शासनाचे दिनांक २१.११.२०१४ रोजीचे वरील संदर्भ क्रमांक ४ च्या पत्रात परीक्षेतून सूट देण्यासंबंधी व सेवा ज्येष्ठता तयार करण्यास संभ्रम निर्माण होत असल्यामुळे आणि स्थापत्य अभियांत्रिकी सहाय्यकांच्या सेवप्रवेश नियमाच्या अधिसूचना क्र.आरटीआर-१०८९/१२६०/आस्था-२, दिनांक १८.६.१९९८ मधील तरतुदी लक्षात घेता दिनांक १.११.२०१३ व ५.४.२०१४ चे वरील संदर्भ क्र. २ व ३ चे शासनपत्रे रद्द केली आहेत. तेव्हा आपणास सूचित करण्यात येते की, विषयांकित प्रकरणी शासनाचे संदर्भ क्र. २ व ३ च्या मार्गदर्शनानुसार या कार्यालयाने निर्गमित केलेले संदर्भ क्र. ५ ते १० चे आदेश रद्द करण्यात येत आहे. तसेच या आदेशान्वये आपल्या विभागाकडून स्थापत्य अभियांत्रिकी सहाय्यक यांना वरिष्ठ वेतनश्रेणी देऊन सुधारित / वरिष्ठ वेतनश्रेणीतील वेतन निश्चित करण्याबाबतचे विभागीय कार्यालयाने निर्गमित केलेले आदेश सुद्धा आपल्या स्तरावर रद्द करण्यात यावे. या प्रकरणी स्थापत्य अभियांत्रिकी सहाय्यकांना संदर्भ क्र. ४ चे शासन पत्रानुसार कनिष्ठ अभियंता पदाच्या अर्हता परीक्षेतून सूट देण्याचे प्रस्तावित आहे. सादर सुधारित आदेश निर्गमित झाल्यानंतर त्यांची वेतन निश्चिती करावी व अनुज्ञेय लाभाबाबतची पुढील कार्यवाही योजवी. सादर प्रकरणी अनियमितता होणार नाही याची दक्षता घ्यावी”.

(iii) On 6.11.2015, respondent No.2 passed order (R-8) which is as follows:-

आदेश

विषय:- स्थापत्य अभियांत्रिकी सहाय्यक, गट-क या पदाचे सेवप्रवेश नियम दिनांक १८ जून १९९८ आणि स्थापत्य अभियांत्रिकी सहाय्यक या पदाकरिता (सा.बा.वी. तिल कर्मचाऱ्यांकरीता) अर्हता परीक्षा प्रशिक्षण आणि नामनिर्देशांद्वारे नियुक्त केलेल्या स्थापत्य अभियांत्रिकी सहाय्यकासाठी विभागीय परीक्षा व प्रशिक्षण यांचे विनियमन करणारे नियम दिनांक ८.८.२००१ मधील तरतुदीच्या अमलबजावणीबाबत.

उपरोक्त विषयांकित प्रकरणी शासनाने संदर्भ क्र. १ चे निर्णयाचे अनुषंगाने स्थापत्य अभियांत्रिकी सहाय्यकांना कनिष्ठ अभियंता पदावर पदोन्नती देताना वयाची ४५ वर्षे पूर्ण झाल्यामुळे पदोन्नतीच्या विभागीय अर्हता परीक्षेतून सूट मिळण्याबाबत निर्गमित केलेले शासनाचे संदर्भ क्र. २ मधील पत्रे शासनाने संदर्भ क्र.३ चे परिपत्रकान्वये रद्द केले आहे. व सा. बा. विभागातील स्थापत्य अभियांत्रिकी सहाय्यक या संवर्गातील कर्मचाऱ्यांच्या सेवाविषयक बाबी संदर्भात दिनांक १८.६.१९९८ व दिनांक ८.८.२०११ च्या शासन अधिसूचना तसेच दिनांक ३१.७.२०१३ च्या शासन निर्णयातिल नमूद तरतुदीनुसार आवश्यक कार्यवाही करण्याबाबत निर्देशित केले आहे,

त्यानुसार शासनाचे संदर्भ क्र.१ चे शासन निर्णय तसेच दिनांक २१.११.२०१४ व दिनांक १२.२.२०१५ चे पत्रामधील निर्देशानुसार स्थापत्य अभियांत्रिकी सहाय्यकांना कनिष्ठ अभियंता पदावर पदोन्नती अथवा कालबद्ध पदोन्नती देताना वयाची ४५ वर्षे पूर्ण झाल्यामुळे विभागीय अर्हता परीक्षेतून सूट मिळण्याबाबत विभागांकडून प्राप्त प्रस्तावानुसार संबंधित स्थापत्य अभियांत्रिकी सहाय्यक व हजेरी लिपिक ई. ना कनिष्ठ अभियंता अर्हता परीक्षेतून सूट देण्याचे आदेश संदर्भ क्र. ४, ५ व ६ अन्वये निर्गमित केलेले आहेत. शासन संदर्भ क्र. ३ चे परिपत्रकातील निर्देशानुसार या कार्यालयाने निर्गमित केलेले संदर्भ क्र. ४, ५ व ६ मधील आदेश या आदेशान्वये रद्द करण्यात येत आहेत.

शासन संदर्भ क्र.१ चे शासन निर्णय व दिनांक २१.११.२०१४ व दिनांक १२.२.२०१५ चे पत्रास अनुसरून संबंधित स्थापत्य अभियांत्रिकी सहाय्यक व हजेरी लिपिक ई. ना कनिष्ठ अभियंता पदासाठीच्या लाभाचे अनुषंगाने पहिलं व दूसरा लाभ देण्याबाबत विभागांकडून प्राप्त प्रस्तावास अनुसरून या कार्यालयाने निर्गमित केलेले संदर्भ क्र.७ मधील आदेशही शासन क्र. ३ चे परिपत्रकातील निर्देशानुसार या आदेशान्वये रद्द करण्यात येत आहेत.

या आदेशान्वये सर्व कार्यकारी अभियंता यांना निर्देशित करण्यात येते की, स्थापत्य अभियांत्रिकी सहाय्यक या संवर्गातील सेवाविषयक बाबी संदर्भात शासन परिपत्रक क्र. ३ चे अवलोकन करून शासनाचे दिनांक १८.६.१९९८ व दिनांक ८.८.२००१ च्या अधिसूचना तसेच संदर्भ क्र. १ दिनांक ३१.७.२०१३ चे शासन निर्णयातील तरतुदीनुसार स्थापत्य अभियांत्रिकी सहाय्यकांना कनिष्ठ अभियंता पदावर पदोन्नती अथवा कालबद्ध पदोन्नती देताना वयाची ४५ वर्षे पूर्ण झाल्यामुळे विभागीय अर्हता परीक्षेतून सूट

मिळण्याबाबतचे प्रस्ताव या कार्यालयास सादर करावे. प्रस्ताव सादर करताना सादर प्रकरणी विशेष लक्ष देऊन अचूक प्रस्ताव सादर होतील याची दक्षता घ्यावी.

सर्व कार्यकारी अभियंता यांनी वरील आदेशाचे तंतोतंत पालन करावे. अन्यथा सर्वस्वी जबाबदारी संबंधीत कार्यकारी अभियंता यांची राहिल याची नोंद घ्यावी.”

7. In their written reply to the rejoinder of the applicants which is at pages 222 to 230, respondent Nos. 2 and 3 have stated (in para 11 and 12) as follows—

“11. The applicants have prayed for the directions to these respondents to direct to implement the order dated 4.10.2014 and 8.10.2014 which against the policy of the Government, the action taken by respondent Nos. 2 and 3 as per the policy of the Government as per the changes are substituted by the Government from time to time. It is submitted that the prayers were made by the applicants in the nature of directions to the State Government , or to take a policy decision in respect of the particular subject in a particular manner. It is further submitted that the relief claiming the applicants are purely an act of the Government and which is the domain of the Govt. exclusively and the applicants do not have enforceable right to make such prayers. In view of the above, the present O.A. filed by

the applicants needs to be rejected.

12. The O.A. filed by the applicants and the relief claimed by the applicants cannot be granted by this Tribunal. It is submitted that there cannot be a direction to the Govt. to enact on a particular policy to think in a particular manner. It is settled law that the scope of judicial review in the matter of policy decision of the State Govt. or in the nature of Govt. policy is minimal. Hence, respondent Nos. 2 and 3 are praying for dismissal of the present O.A.. The Govt. is entitled to make pragmatic adjustments and policy decisions, which may be necessary or called for under the prevalent peculiar circumstances. It is settled law that the Court or Tribunal may not strike down a policy decision taken by the Govt., merely because it feels that another decision would have been more fair or wise, scientific or logical. The principle of reasonableness and arbitrariness in governmental action is the core of our constitutional scheme and structure.”

8. The applicants, in the instant case are claiming reliefs of restoration of orders (Annexures A-2, A-3 and A-4) which were upheld by this Tribunal while disposing of O.A. No.224/2014 and setting aside subsequent orders (Annexures A-8, A-9 and A-10) which had the effect of negating the orders passed by this Tribunal.

It may be reiterated that the order passed in O.A.No.224/2014 has attained finality.

9. I have quoted the orders on the basis of which pay of the applicants was re-fixed as per Annexures A-8, A-9 and A-10. By these orders, the applicants were sought to be divested of what had vested in them by virtue of order passed in O.A. No. 224/2014 which had attained finality. This will not be permissible under the law. In support of this conclusion, reliance may be placed on the judgment dated 11.1.2022 passed by the Hon'ble Supreme Court in Civil Appeal Nos. 297 and 298 of 2022 (Punjab State Co-operative Agricultural Development Bank Ltd. V/s Registrar, Co-operative Societies and others). In this case, in para 42, the Hon'ble Supreme Court framed the question as follows:-

“42. The question that emerges for consideration is as to what is the concept of vested or accrued rights of an employee and at the given time whether such vested or accrued rights can be divested with retrospective effect by the rule making authority.”

It was held—

“44. This Court, after taking note of the earlier view on the subject further held in **Chairman, Railway Board and others** (supra) as under:-

20. It can, therefore, be said that a rule which operates in future so as to govern future rights of those already in service cannot be assailed on the

ground of retroactivity as being violative of Articles 14 and 16 of the Constitution, but a rule which seeks to reverse from an anterior date a benefit which has been granted or availed of, e.g., promotion or pay scale, can be assailed as being violative of Articles 14 and 16 of the Constitution to the extent it operates retrospectively.

24. In many of these decisions “vested rights” or “accrued rights” have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc., of the employees. The said expressions have been used in the context of right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in Roshan Lal Tandon (1968) 1 SCR 185, B.S. Vadera (1968) 3 SCR 575 and Raman Lal Keshav Lal Soni (1983) 2 SCC-33.”

The above referred case primarily deals with divesting pensioners of the benefits already vested in them. The impugned orders (Annexures A-8, A-9 and A-10) are dated 10.8.2015. By this time, all three applicants had retired and they were getting pension. Applicant No.1 (since deceased) retired on 31.10.2013. Applicant No.2 retired on 31.12.2013. Applicant No.3 retired on 31.8.2010. Thus, the ratio laid down in the aforesaid ruling will squarely apply. It would follow that the respondents could not have divested the applicants of what had vested in them by virtue of orders (Annexures A-2, A-3 and A-4). There was all the more reason for not divesting the applicants of these benefits because this Tribunal had decided in O.A. No. 224/2014 that the orders (Annexures A-2, A-3 and A-4) are nothing but the orders promoting the applicants as Junior Engineers. Thus, the application deserves to be allowed. Hence, the following order:-

ORDER

The O.A. No.540/2016 is allowed in the following terms:-

- (a) The impugned orders (Annexures A-8, A-9 and A-10) are quashed and set aside.

- (b) Legality and validity of pay of the applicants fixed as per Annexures A-2, A-3 and A-4 is upheld.
- (c) Arrears payable to the applicants by virtue of this determination shall carry interest @ 6% p.a. from the date on which they became due till the date of actual payment.

(M.A.Lovekar)
Member (J)

pdg