

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 686 of 2018 (DB)

Sushil Namdeorao Khune,
Aged about 49 years, r/o Flat No.202,
NIT Ridge Road Complex, Raghujinagar,
Nagpur-440 024.

Applicant.

Versus

- 1) State of Maharashtra,
through its Principal Secretary,
Department of Water Resources,
Mantralaya, Mumbai-32.
- 2) Chief Engineer, Gosikhurd Project,
VIDC, Civil Lines, Nagpur.
- 3) Maharashtra Public Service Commission,
through its Secretary, Mumbai.
- 4) Shri Rajkumar Eknath Ubale,
Sub Divisional Engineer, Irrigation
Project Construction Sub Division Khopi,
Tah. Khed, Dist. Ratnagiri.

Respondents.

Shri A.M. Borkar, Advocate for the applicant.
Shri A.M. Ghogre, learned P.O. for respondent nos.1&3.
Shri H.D. Marathe, Advocate for respondent no.2.
S/Shri M.M. & A.M. Sudame, Archana M. Sudame, Advs. for R-4.

WITH

ORIGINAL APPLICATION No. 704 of 2018 (DB)

Smt. Sonali Rajnikant Nahar,
Aged about 45 years, r/o Flat No.04,
OAK LUXUR NX, 45 Shankar Nagar,
Nagpur-440 010.

Applicant.

Versus

- 1) State of Maharashtra,
through its Principal Secretary,
Department of Water Resources,
Mantralaya, Mumbai-32.
- 2) Chief Engineer, Water Resources Department,
Civil Lines, Nagpur.
- 3) Maharashtra Public Service Commission,
through its Secretary, Mumbai.
- 4) Shri Rajkumar Eknath Ubale,
Sub Divisional Engineer, Irrigation
Project Construction Sub Division Khopi,
Tah. Khed, Dist. Ratnagiri.

Respondents.

Shri A.M. Borkar, Advocate for the applicant.
Shri A.M. Ghogre, learned P.O. for respondent nos.1&3.
Shri H.D. Marathe, Advocate for respondent no.2.
S/Shri M.M. & A.M. Sudame, Archana M. Sudame, Advs. for R-4.

WITH

ORIGINAL APPLICATION No. 888 of 2018 (DB)

Shriram Rawaji Kawale,
Aged about 50 years, r/o Flat No.209,
NIT Complex, Raghujinagar,
Nagpur-440 024.

Applicant.

Versus

- 1) State of Maharashtra,
through its Principal Secretary,
Department of Water Resources,
Mantralaya, Mumbai-32.
- 2) Chief Engineer, Gosikhurd Project,
VIDC, Civil Lines, Nagpur.
- 3) Maharashtra Public Service Commission,
through its Secretary, Mumbai.
- 4) Shri Rajkumar Eknath Ubale,
Sub Divisional Engineer, Irrigation
Project Construction Sub Division Khopi,
Tah. Khed, Dist. Ratnagiri.

Respondents.

Shri A.M. Borkar, Advocate for the applicant.
Shri A.M. Ghogre, learned P.O. for respondent nos.1&3.
Shri H.D. Marathe, Advocate for respondent no.2.
S/Shri M.M. & A.M. Sudame, Advs. for respondent no.4.

**Coram :- Shri Shree Bhagwan,
Vice-Chairman and
Shri Justice M.G. Giratkar,
Member (J).**

Date of Reserving for Judgment : 5th April,2022
Date of Pronouncement of Judgment : 26th April,2022.

COMMON JUDGMENT**Per : Member (J).****(Delivered on this 26th day of April, 2022)**

Heard Shri A.M. Borkar, learned counsel for the applicants, Shri A.M. Ghogre, learned P.O. for respondent nos.1 and 3, Shri H.D. Marathe, learned counsel for respondent no.2 and Shri Potnis, learned counsel holding for Shri M.M. Sudame, learned counsel for respondent no.4.

2. Common issues are involved in all these O.As., hence decided by this common Judgment –

3. The case of the applicant in O.A.No.686/2018 in short is as under –

The applicant joined on the post of Assistant Engineer (Grade II) in the office of respondent no.2 on 8/7/1996 as per appointment order dated 1/7/1996. Vide Notification dated 16/06/1997, Rules for regulating services of Assistant Engineers were framed and published by respondent no.1, which, inter-alia, envisaged criteria for determination of seniority of persons appointed on the post of Assistant Engineer. The applicant passed the requisite written MPSC examination, held in December,1998, within the stipulated time and thus became eligible to hold his placement in seniority list, as per his date of joining on the said post, as envisaged in Recruitment Rules

dated 16/06/1997 read with amended rules dated 8/7/2009. Ad-hoc appointment of applicant of the said post since 1/1/1994 to 31/12/1996, came to be regularized vide Government Resolution dated 01/03/2000. In furtherance of Notification dated 16/6/1997, Government in Water Resources Department, vide its Notification dated 8/7/2009 published rules called as 'Assistant Engineers' (Civil) Grade-II, in the Maharashtra Service of Engineers, Group B (Recruitment) (Amendment) Rules,2009". In view of this, Rules notified on 16/06/1997 are to be referred to as "principal rules" and against the words "Irrigation Department, prevalent therein, the words "Water Resources Department" are to be substituted. With the introduction of these rules, rule 8, in the principal rules, became effective for regulating the services, seniority etc. The respondent no.1 circulated the final seniority list on 1/9/2017, as it stood on 1/1/2017, in which the name of applicant has been placed at Sr. No.1083 and his seniority in the in the cadre came to be shown from the date '15/03/2001' by erroneously granting him the said deemed date, as against his actual date of joining to the said post i.e. on 8/7/1996.

4. The applicant has passed the written MPSC examination in the year 1998 itself. He was in continuous service and his ad-hoc appointment was regularized vide G.R. dated 1/3/2000. Therefore,

actual date of appointment i.e. 8/7/1996 is admissible to the applicant, as per criteria laid down in principal rules, dated 16/06/1997 as amended on 8/7/2009. Accordingly, the applicant needs to be shown at Sr.No.966, as against Sr.No.1083, in the seniority list of Assistant Engineers' (Civil), Grade II, (as it stood on 1/1/2017) for promotional and other consequential benefits.

5. Against the wrong placement of applicant in the seniority lists of Assistant Engineer (Grade II), the applicant made representations to respondent no.1, through respondent no.2, from time to time. He requested that his name be placed in the list, as per his date of joining in the department on 8/7/1996.

6. The respondent no.1, however, passed the impugned order dated 27/9/2017, indicating that request of applicant for placement of his name in the seniority list of Assistant Engineer (Grade II), as per his date of appointment to the said post, cannot be agreed to, in view of his (R-1) erroneous observation and / or ignorance of the fact that applicant has passed the prescribed MPSC examination within given time. Being aggrieved by the said order, the applicant has approached to this Tribunal.

7. Grievances of applicants in O.A. 704/2018 and O.A. 888/2018 are similar, only dates of appointment are different.

8. In O.A. 704/2018 the applicant was appointed as per order dated 18/03/1996 and he has joined on the post of Assistant Engineer (Grade II) in the office of respondent no.2 on 26/03/1996.

9. The applicant in O.A. 888/2018 was appointed as per order dated 01/07/1996 and he has joined on the post of Assistant Engineer (Grade II) in the office of respondent no.2 on 16/07/1996. Rest of the pleadings of these applicants are same as like applicant in O.A. 686/2018.

10. The applications are opposed by the respondents by filing reply. It is submitted that the seniority of applicants are fixed as per the merit list of examination of 1998 and therefore they are not entitled for any relief.

11. The learned counsel for the applicants has pointed out various Govt. G.Rs. There is no dispute that all three applicants were appointed in the year 1996 on temporary basis on the post of Assistant Engineer (Grade II). Their appointments were regularised as per the Govt. G.R. dated 01/03/2000 on following conditions -

शासन निर्णय :-

शासन आता पाटबंधारे विभाग व सार्वजनिक बांधकाम विभागात मिळून सहायक अभियंता श्रेणी-२ संवर्गात (स्थापत्य/विद्युत/यांत्रिकी/कृषि अभियांत्रिकी) दि.२.४.८९ ते ३१.१२.९६ पर्यंत पाटबंधारे विभागातील १०९७ व सार्वजनिक बांधकाम विभागातील १०५३ अशा एकूण २१५० पदांवरील तदर्थ नियुक्त्या घटनेच्या कलम ३२० (३) अन्वये महाराष्ट्र लोकसेवा आयोगाच्या कक्षेतून वगळून नियमित करण्यासाठी पुढील प्रमाणे मंजूरी देत आहे.

अ) दि.२.४.८१ ते दि.१६.४.८४ पर्यंत नियुक्त केलेल्या पदवीधर कनिष्ठ अभियंत्यांना त्यांच्या नियुक्तीच्या दिनांकापासून सहायक अभियंता श्रेणी-२ पदाचा दर्जा यापुर्वीच दिलेला आहे. आता अशा सहायक अभियंता श्रेणी-२ संवर्गातील एकुण ७५५ अभियंत्यांच्या नियुक्त्या नेमणुकीच्या दिनांकापासून नियमित करण्यात येत आहेत.

ब) दि.१७.४.१९८४ ते ३१.१२.१९९३ पर्यंत करण्यात आलेल्या एकुण ५९६ तदर्थ नेमणुकावरील अभियंत्यांना त्यांच्या नियुक्तीच्या दिनांकापासून सहायक अभियंता श्रेणी-२ संवर्गात नियमित करण्यात येत आहेत.

क) दि.१.१.१९९४ ते दि.३१.१२.१९९६ पर्यंतच्या एकुण ३९९ तदर्थ नेमणुका त्यांच्या नियुक्तीच्या दिनांकापासून सहायक अभियंता श्रेणी-२ संवर्गात नियमित करण्यात येत आहेत.

ड) दि.१.४.१९८१ ते दि.१६.६.१९९७ पर्यंत म्हणजेच सेवा प्रवेश नियम अंतिम होईपर्यंत सेवेत राहून पदवी धारण केलेल्या पदवीधारक कनिष्ठ अभियंता/शाखा अभियंता यांची ज्येष्ठता शासनाच्या दि.२९.११.८४ च्या शासन निर्णयातील ३/८ सेवा जोडून दिलेल्या मानीव दिनांकापासून निश्चित करून अशा एकुण ४०० अभियंत्यांच्या, सहायक अभियंता श्रेणी-२ संवर्गातील नेमणुका नियमित करण्यात येत आहेत.

२. संबंधित सहायक अभियंता श्रेणी-२ संवर्गातील अभियंत्यांना त्यांच्या नियमितीकरणाच्या दिनांकापासून ज्येष्ठता निश्चित करण्यात येऊन त्यानुसार सदर अभियंत्यांची ज्येष्ठतासूची यथावकाश प्रसिध्द करण्यात येईल. सदर आदेश सार्वजनिक बांधकाम विभागाच्या व सामान्य प्रशासन विभागाच्या सहमतीने निर्गमित करण्यात येत आहेत.

12. As per the Govt. Notification dated 16/06/1997, rules of “Assistant Engineers (Civil), Grade-II, in the Maharashtra Service of Engineers, Group-B (Recruitment) Rules,1997” were framed. The Rule-8 of the Rules,1997 reads as under –

“(8) Notwithstanding anything contained in rule 3, the temporary appointments made to the post till the 31st December, 1996, may be regularised in the following manner, namely:-

(a) The persons who have completed minimum three years of continuous service as on the 31st December, 1996 and have satisfied the requirements of qualification and age limit mentioned in rule 3, at the time of their appointment, shall have to viva-voce or Limited

Competitive examinations to be held by the Commission during 1997-1998.

- (b) Services of those persons who will qualify in such examination will be regularised.
- (c) The seniority of such qualified person shall be fixed as per the existing rules noticed vide Government Notification General Administration Department No.SRV 1076/XII, dated 21st June 1982 regarding fixation of seniority.
- (d) The services of persons who do not qualify in such examination shall be terminated by the Government.
- (e) The person who has been appointed to the post on or after 1st January 1994 but on or before 31st December 1996 and who possess the qualification mentioned in rule 3(ii) shall, in relaxation if necessary of the age-limit prescribed in rule 3(i), be required to get selected in the first attempt in the regular combined competitive examination to be held by the commission during 1997-1998. Service of such persons who have not been selected in the above competitive examination shall be terminated by the Government, and the seniority of selected persons shall be fixed in accordance with the rules mentioned in Government Notification dated the 21st June 1982 mentioned in rule 8 (c).”

13. The rules of 16/06/1997 were amended on 8/7/2009. The rule 8 was amended as under -

“8. Notwithstanding anything contained in rule 3, the appointments made to the posts till the 16th June 1997, shall be regularised in the following manner, namely:-

- (a) The persons appointed on regular basis during the period from the 2nd April 1981 to the 16th April 1984 to the post of Graduate Junior Engineers (Class-III) either through the State Selection Board or from the candidates who have given bonds for serving in Government service as per

the then prescribed procedure for appointment, shall have to pass viva-voce test that shall be the qualifying examination, to be held by the Commission during the period 2009-2010 or immediately thereafter, to enable them to be absorbed in the cadre of Assistant Engineer, Grade II (Junior Gazetted Class-II), created for Graduate Junior Engineers vide Government Resolution, Irrigation Department, No.CDS 1582 / 158 (215) / EST-(10), dated the 16th April 1984.

(b) The Diploma holder Junior Engineers regularly appointed in Class-III post and who have obtained A.M.I.E. (Equivalent to B.E. Degree) or B.E. Degree while in service have been given benefit of 3/8th of service rendered as Junior Engineer, during the period from the 1st April 1981 to 16th June 1997, in the light of the provisions of the Government Resolution, Irrigation Department, No.S.L.S.2681/1273/(500)/EST (8), dated the 29th November 1984. Such persons shall have to pass viva-voce test that shall be the qualifying examination, to be held by the Commission during 2009-2010 or immediately thereafter, to enable them to be absorbed in the cadre of Assistant Engineer, Grade II, vide Government Resolution, dated the 16th April 1984.

(c) Services of persons appointed on temporary basis to the post of Assistant Engineer, Grade II, during the period from the 17 April 1984 to 31st December 1996 and who have already qualified in viva-voce test held by the Commission from the 7th August 1997 to 2nd September 1997 and those who have qualified in the combined competitive examination held by the Commission during the period from the 12th December 1998 to 13th December 1998 shall be regularised in the cadre of Assistant Engineer, Grade-II, from the date of their initial appointment in the cadre of Assistant Engineer, Grade-II.

(d) The persons appointed during this period from 17th April 1984 to 31st December 1996, and not qualified in the above said viva-voce test or Combined Competitive Examination as the case may be held by the Commission shall have to pass in the viva-voce test to be held by the

Commission during the period 2009-2010 or immediately thereafter, to enable them to get regularised in the cadre of Asstt. Engineer, Grade-II

(e) Persons who do not pass in such viva-voce test shall be given second opportunity to appear for the viva-voce test to be held by the Maharashtra Public Service Commission, to enable them to get their services regularised in the cadre of Assistant Engineer, Grade-II.

(f) The persons who do not pass in the second attempt shall be given one more opportunity by way of last chance to appear for the viva-voce test to be held by the Maharashtra Public Service Commission, to enable them to get their services regularised in the cadre of Assistant Engineer, Grade-II. -----

14. The learned counsel for the applicants Shri A.M. Borkar has pointed out the Judgment of Hon'ble Bombay High Court in case of **Sunita Daulatrao Patil & Ors. Vs. State of Maharashtra & Ors.**, with connected matters delivered on 17/03/2010.

15. Heard Shri A.M. Ghogre, learned P.O. for respondent nos.1 and 3. He has submitted that examinations were conducted by the MPSC in the year 1998 and the seniorities were fixed as per merits list. Hence, O.As. are liable to be dismissed.

16. Appointment orders of all the applicants show that they were appointed in the year 1996. Their appointments were regularised as per the Govt. G.R. dated 01/03/2000 from the date of their initial appointments. On 16/06/1997 the rules were framed. As per the Rule 8 (e) "the person who has been appointed to the post on or after 1st January 1994, but on or before 31st December 1996 and

who possess the qualification mentioned in rule 3(ii) shall, in relaxation if necessary of the age-limit prescribed in rule 3 (i), be required to get selected in the first attempt in the regular combined competitive examination to be held by the commission during 1997-1998. Service of such persons who have not been selected in the above competitive examination shall be terminated by the Government, and the seniority of selected persons shall be fixed in accordance with the rules mentioned in Government Notification dated the 21st June 1982.”

17. The Rules dated 16/06/1997 were amended on 08/07/2009. As per Rule 8 (c) “Services of persons appointed on temporary basis to the post of Assistant Engineer, Grade II, during the period from 17th April 1984 to 31st December 1996 and who have already qualified in viva-voce test held by the Commission from 7th August 1997 to 2nd September 1997 and those who have qualified in the combined competitive examination held by the Commission during the period from 12th December 1998 to 13th December 1998 shall be regularised in the cadre of Assistant Engineer, Grade-II, from the date of their **initial appointments** in the cadre of Assistant Engineer, Grade-II.”

18. There is no dispute that the applicants’ services were regularised as per Govt. G.R. dated 01/03/2000. As per the rules of 1997 and amended rules of 2009, the applicant (in O.A.686/2018) has

passed MPSC examination conducted in the month of December, 1998. The applicants in rest of the O.As. have also passed said examination and therefore they are entitled for regularisation of their services from the date of their initial appointments on the post of Assistant Engineer, Grade-II. These rules were challenged in the Writ Petition decided by the Bombay Hon'ble High Court, Bench at Aurangabad in case of **Sunita Daulatrao Patil & Ors. Vs. State of Maharashtra & Ors.** The Hon'ble Bombay High Court has held that the challenge to the Rules (b), (d), (e) and (f) who could not pass the examination in the year 1998, they were given chance as per Rule (f). It was contention of the petitioners that their seniorities will be disturbed by the newly amended rule (f). The Hon'ble Bombay High Court has held that rules were framed in the year 2009 can be challenged by the petitioners before the Maharashtra Administrative Tribunal.

19. Various representations are made by the applicants to fix their seniorities from the date of their initial appointments, The respondents have published the seniority list on 1/9/2017 by which the seniority of all three applicants were not given from the date of their initial appointments. After the various representations, the respondent no.1 has informed to the applicants on 27/9/2017 stating that the seniorities of the applicants are fixed as per the merit list in the

examination conducted by the MPSC in December, 1998 and therefore the applicants are not entitled to claim their seniority from the date of their initial appointments. The order dated 27/9/2017 appears to be contrary to the rules framed by the Government itself.

20. As per the amended rule (c) “services of persons appointed on temporary basis to the post of Assistant Engineer, Grade II, during the period from the 17 April 1984 to 31st December 1996 and who have already qualified in viva-voce test held by the Commission from the 7th August 1997 to 2nd September 1997 and those who have qualified in the combined competitive examination held by the Commission during the period from the 12th December 1998 to 13th December 1998 shall be regularised in the cadre of Assistant Engineer, Grade-II, from the date of their initial appointments in the cadre of Assistant Engineer, Grade-II”. These rules do not show anywhere that their seniorities shall be fixed as per merit. Once the services are regularised from the date of their initial appointments, then the seniority shall be fixed from the date of their appointments. It is clear that the respondents have committed breach of rules dated 16/6/1997 as amended on 08/07/2009. The applicants have fulfilled all the criteria as per rules of 1997 as amended on 8/7/2009 and therefore their seniority should have been fixed from the date of their

initial appointments in the cadre of Assistant Engineer, Grade-II. In that view of the matter, following order –

ORDER

- (i) The O.As. are allowed.
- (ii) The impugned order dated 27/09/2017, passed by respondent no.1 is hereby quashed and set aside **(in O.A.No.686/2018)**.
- (iii) The respondents are directed to carry out correction in the seniority list of Assistant Engineer Grade II and place the name of applicant at Sr.No.966, as against the existing Sr.No.1083, where his name erroneously shown and he be granted seniority on the said post from 08/07/1996, i.e., from the date of his appointment on the said post, with all consequential benefits, including promotions and monetary benefits **(in O.A.No.686/2018)**.
- (iv) The impugned order dated 27/09/2017, passed by respondent no.1 is hereby quashed and set aside **(in O.A.No.704/2018)**.
- (v) The respondents are directed to carry out correction in the seniority list of Assistant Engineer Grade II and place the name of applicant at Sr.No.966, as against the existing Sr.No.1120, where her name erroneously shown and she be granted seniority on the said post from 26/03/1996, i.e., from the date of her appointment on the

said post, with all consequential benefits, including promotions and monetary benefits **(in O.A.No.704/2018)**.

(vi) The impugned order / Govt. Circular dated 01/09/2017, passed by respondent no.1 is hereby quashed and set aside **(in O.A.No.888/2018)**.

(vii) The respondents are directed to carry out correction in the seniority list of Assistant Engineer Grade II and place the name of applicant at Sr.No.966, as against the existing Sr.No.1066, where his name erroneously shown and he be granted seniority on the said post from 16/07/1996, i.e., from the date of his appointment on the said post, with all consequential benefits, including promotions and monetary benefits **(in O.A.No.888/2018)**.

(viii) No order as to costs.

(Justice M.G. Giratkar)
Member(J).

(Shree Bhagwan)
Vice-Chairman.

Dated :- 26/04/2022.

dnk.

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 V.C. & Member (J).

Judgment signed on : 26/04/2022.

Uploaded on : 26/04/2022. ok...