

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 1002 of 2021 (D.B.)

1. Mahesh Manoharrao Mathurkar,
Aged about 50 years, Occupation : Service,
(Deputy Engineer), R/o Plot No.36,
Nagraj nagar, Dhamangaon road,
Yavatmal. Tah, & Dist. Yavatmal. **(Deleted)**

2. Vijay Ambadas Cheke,
Aged about 52 years,
Occupation : Service (Deputy Engineer),
R/o Civil Line Umarkhed, Tah.Umarkhed,
Dist. Yavatmal.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Additional Secretary,
Public Works Department,
Mantralaya, Mumbai-32.

- 2) The Chief Engineer,
Public Works Department,
Amravati Circle, Amravati.

- 3) The Superintending Engineer,
Public Works Department,
Yavatmal, Tah. & Dist. Yavatmal.

Respondents.

S/Shri S.N.Gaikwad & S.P.Palshikar, Advs. for the applicant.
Shri A.P. Potnis, learned P.O. for respondents.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Dated :- 04/01/2024.

JUDGMENT

Heard Shri S.P. Palshikar, learned counsel for the
applicant and Shri A.P. Potnis , learned P.O. for the respondents.

2. The regular Division Bench is not available. The Hon'ble Chairperson, M.A.T., Principal Bench, Mumbai issued Circular No.MAT/MUM/JUD/469/2023, dated 24/04/2023. As per the direction of Hon'ble Chairperson, if both the parties have consented for final disposal, then regular matter pending before the Division Bench can be disposed off finally.

3. As per the M.A.T., Principal Bench, Mumbai office order / letter No.MAT/MUM/JUD/1350/2023, dated 21/11/2023, the Hon'ble Chairperson, M.A.T., Principal Bench, Mumbai has given direction to this Tribunal to decide the Division Bench matters if the matter is covered by the Judgments of Hon'ble Supreme Court, Hon'ble High Court and the Benches of the M.A.T. etc.

4. The matter is heard and decided finally with the consent of learned counsel for both the parties.

5. The case of the applicant in short is as under –

6. The applicant was appointed on 13/10/1995 on ad-hoc basis as an Assistant Engineer, Grade-II. The applicant appeared in the examination of M.P.S.C. He has passed the said examination. The Government has issued the G.R. / Notification dated 08/07/2009. As per Clause-3 (C) of the said Notification, those who are appointed between 17/04/1984 to 31/12/1996 and passed the examination

conducted between 07/08/1997 to 02/09/1997, they shall be treated in the cadre from the date of their initial appointment.

7. The respondents have not promoted the applicant because seniority of applicant was not corrected as per the date of initial appointment. Hence, the applicant approached to this Tribunal for the following reliefs –

“(i) allow the instant original application with costs;

(ii) be pleased to direct the respondent No.1 to fix the seniority from the date of their initial date of appointment i.e. 13.10.1995 and 17.10.1995 respectively;

(ii-a) further be pleased to direct the respondent No.1 to show the name of applicant in the seniority list after Sr. No.655;

(iii) further directed to the respondent No. 1 after considering the seniority from the date of initial appointment to grant promotion according to their seniority and also grant consequential benefit arising therefrom

(iv) grant any other relief which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the instant application.”

8. The O.A. is strongly opposed by the respondents. It is submitted that the applicant is junior and therefore he is not promoted and therefore the O.A. is liable to be dismissed.

9. During the course of submission, the learned counsel for applicant has pointed out the Judgment of Hon'ble Bombay High Court in the case of **Sunita Daulatrao Patil and Ors.** This Bench has considered the said Judgment in O.A.No.888/2018 with connected

O.As. Para-18 to 20 of the Judgment in the O.A. are reproduced below -

*“(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 (inO.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.”

10. The applicant is covered by the Notification dated 08/07/2009. The applicant has fulfilled all the criteria as per the Rule dated 16/06/1997 as amended on 08/07/2009 and therefore his seniority should have been fixed from the date of his initial

appointment in the cadre of Assistant Engineer, Grade-II. In that view of the matter, the following order is passed –

ORDER

- (i) The O.A. is allowed.
- (ii) The respondent no.1 is directed to show the name of applicant in the seniority list after Sr.No.655 on the date on which the applicant was initially appointed.
- (iii) No order as to costs.

Dated :- 04/01/2024.

dnk.

(Justice M.G. Giratkar)
Vice Chairman.

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

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 04/01/2024.