

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
NAGPUR BENCH, NAGPUR  
ORIGINAL APPLICATION NOS 317 & 426 OF 2014**

**DISTRICT : YAVATMAL**

**1. ORIGINAL APPLICATION NO 317 OF 2014**

Maharashtra Rajya Sthapatya )  
Abhiyantriki Sahayyak Sangh, )  
Registration No. NGP 5033, )  
C/o: Shri R.M Ledange, Zilla Parishad )  
Colony, Wani, Dist-Yavatmal. )  
Through its General Secretary, )  
Shri R.M Ledange. )...**Applicant**

**Versus**

The State of Maharashtra )  
Through Secretary, Department of Water )  
Resources, Mantralaya, )  
Mumbai 400 032. )...**Respondents**

**2. ORIGINAL APPLICATION NO 426 OF 2014**

Maharashtra Rajya Sthapatya )  
Abhiyantriki Sahayyak Sangh, )  
Registration No. NGP 5033, )  
C/o: Shri R.M Ledange, Zilla Parishad )  
Colony, Wani, Dist-Yavatmal. )

Through its General Secretary,  
Shri R.M Ledange.

)  
)...**Applicant**

**Versus**

The State of Maharashtra )  
Through Secretary, Department of Public )  
Works, Mantralaya, )  
Mumbai 400 032. )

)...**Respondents**

Shri P.D Meghe, learned advocate for the Applicants.

Shri P.N Warjurkar, learned Presenting Officer for the *sole*  
Respondent .

**CORAM : Shri Rajiv Agarwal (Vice-Chairman) (A)**  
**Shri J.D Kulkarni (Vice-Chairman) (J)**

**DATE : 11 .08.2017**

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

**ORDER**

1. Heard Shri P.D Meghe, learned advocate for the Applicant and Shri P.N Warjurkar, learned Presenting Officer for the Respondents.
2. These Original Applications are heard together and are being disposed of by a common order as the issues to be decided are inter-related.

3. In O.A no 317/2014 the Applicant is seeking implementation of Circulars dated 18.3.1998 and 18.6.1998 and seeking granting of promotional pay scale of Junior Engineer to all Civil Engineering Assistants, particularly those who have completed 45 years of age, by granting them exemption from passing the qualifying examination for the post of Junior Engineer.

In O.A no 426/2014, the Circular dated 1.11.2013 is challenged along with Circulars dated 21.11.2014 and 12.2.2015. It is prayed that all these Circulars may be quashed and set aside.

4. Learned Counsel for the Applicant argued that the Applicant in these Original Applications is the Association of Civil Engineering Assistants working in various Departments in the State. In O.A no 317/2014 relief is sought against the Water Resources Department, while in O.A no 426/2014, relief is sought against the Public Works Department. The Government in Water Resources Department has taken a policy decision to create a cadre of Civil Engineering Assistants (C.E.A) by merging various technical posts like Sub-Overseers, Surveyors, Technical Assistants, Mistry, Road Karkoon etc. The Respondent, however, did not absorb all such employees immediately as Civil Engineering Assistant as the Recruitment Rules for the post of Civil Engineering Assistants were not framed. In the meanwhile, the Government of Maharashtra issued a G.R dated 8.6.1995, providing that an employee would be entitled to get pay in the pay scale of promotional post after 12 years of service, if he

could not be promoted to the higher post for want of vacancies. As the promotional post from the post of Civil Engineering Assistant is Junior Engineer, the persons working in subordinate posts which were merged into the cadre of Civil Engineering Assistant, would be entitled to get the pay scale of Junior Engineer after 12 years of service. Accordingly, the Respondent issued Circular dated 18.3.1998. Another Circular was issued on 18.6.1998. However, the Respondent is not implementing these Circulars. Learned Counsel for the Applicant argued that by judgment dated 19.9.2013 in W.P no 4915/2012, Nagpur Bench of Hon'ble High Court has held that higher pay scale of Junior Engineer was rightly granted to Mistry Grade-I, Mistry Grade-II, Muster Clerk etc. after completion of 12 years of service and after completion of 45 years of age, exemption from appearing in the professional examination can be granted. In W.P no 6329/1997 by judgment dated 18.6.2009, Bombay High Court has held that even if a Civil Engineering Assistant was granted exemption from passing departmental examination, he will not be eligible to be promoted unless he has passed the professional examination. However, in W.P no 6212/2011 by judgment dated 9.11.2011, Aurangabad Bench of Hon'ble High Court held that General Administration Department have issued communication dated 4.12.2008, which exempts Civil Engineering Assistants from passing qualifying examination after attaining the age of 45 years. This judgment was upheld by the Hon'ble Supreme Court by judgment dated 5.4.2013 in Civil Appeal no. 3625-3628 of 2012. In Writ Petition no. 3466/2012 by judgment dated 29.8.2013, Hon'ble High Court (Nagpur Bench) held that Civil

Engineering Assistants working in Maharashtra Jeevan Pradhikaran were eligible to be given the pay scale of Junior Engineer after 12 years of service as Technical Assistant/Mistry etc.

5. Learned Presenting Officer (P.O) argued on behalf of the Respondent that G.R dated 8.6.1995 regarding Time Bound Promotion does not provide for grant of higher pay scale merely on completion of 12 years of service. This G.R is issued to ensure that an employee does not suffer indefinitely if there are no promotional opportunities. An employee, who is eligible for promotion, mean he has required grading in his Annual Confidential Reports and has passed departmental /professional examination for promotion, can be given Time Bound Promotion, i.e. pay in the pay scale of the promotional post. That will happen if he cannot be promoted only for want of vacancy in the promotional post. Hon'ble High Court has clearly held in W.P no 3815/2012 etc. by judgment dated 29.5.2013 that employees working as Civil Engineering Assistant, who were initially working in the cadre of Technical Assistant/Mistry/Karkoon would be entitled to pay scale in the cadre of Junior Engineer. It is clear that only an employee who is already absorbed as C.E.A, will be eligible to get the pay scale of Junior Engineer on getting Time Bound Promotion.

6. We find that G.R dated 31.1.1989, which created a new cadre of Civil Engineering Assistant did not merge existing cadres of Technical Assistant/Mistry/Karkoon etc. In fact, Schedule 'A' to the G.R listed a total of 17 cadres.

Employees working in 4 categories, viz. Sub-Overseers, Surveyor, employees who had passed professional examination of Sub-Overseers, and employees in other 13 cadres, who had passed examination for Civil Engineering Assistant were to be absorbed straightway as Civil Engineering Assistant. For 13 subordinate cadres like Technical Assistant, Mistry, Karkoon etc. the absorption in the post of Civil Engineering Assistant was not automatic. One important requirement was availability of posts of Civil Engineering Assistants. Posts were to be created from January 1990 onwards. 700 posts were to be created every year. There were conditions for absorption of subordinate cadres in the post of Civil Engineering Assistants. Unless an employee was first absorbed as Civil Engineering Assistant, question of granting him pay scale in the grade of Junior Engineer would not arise, as per the judgment of Hon'ble High Court referred to above.

7. Let us now examine the judgment of Hon'ble High Court (Nagpur Bench) in W.P no 4915/2015 dated 19.9.2013. This judgment is given in the context of Civil Engineering Assistants working in Zilla Parishad. It is mentioned that by G.R dated 5.8.2003, posts of Mistry Grade-I, Mistry Grade-II, Muster Clerk etc. were amalgamated. It is not the case of the Applicant that G.R dated 5.8.2003 is pari-materia to the G.R dated 31.1.1989 <sup>which</sup> created posts of Civil Engineering Assistant in the State Government. G.R dated 31.1.1989, which is applicable to Water Resources Department, has not amalgamated these posts. Only those who fulfilled certain conditions were to be absorbed as Civil Engineering

Assistants depending upon the available vacancies. In this Writ Petition, main issue was regarding exemption from passing professional qualifying examination on reaching the age of 45 years. It was held that Chief Executive Officer of a Zilla Parishad was empowered to grant such exemption. Also, pay scale of Junior Engineers could be granted to those persons who are absorbed as Civil Engineering Assistants from the post of Mistry, Tracer etc. This judgment cannot be said to have laid down ratio which will be applicable to Civil Engineering Assistants in State Government.

8. In Writ Petition no. 3815/2012 etc, Nagpur Bench of Hon'ble High Court by judgment dated 29.8.2013 has held in the case of employees of Maharashtra Jeevan Pradhikaran have been held eligible to get benefit of Time Bound Promotion in the pay scale of Junior Engineer after 12 years. It is held that:-

“The perusal of the said Circular would reveal that all the employees in the Irrigation Department working as Civil Engineering Assistant, who were initially working in the cadre of Technical Assistant/Mistry/Karkoon would be entitled to the pay scale in the cadre of Junior Engineer upon completion of 12 years' service from the date of their appointment as Technical Assistant/Mistry/Karkoon etc.”

It is quite clear that only those Civil Engineering Assistants, who were appointed as Civil Engineering Assistants were eligible to get the benefit of Time Bound Promotion. Those

subordinate staff, who would not be absorbed in the cadre of Civil Engineering Assistant, cannot be held eligible to get Time Bound Promotion in the cadres of Junior Engineer.

9. In Writ Petition no. 6212/2011 (Aurangabad Bench) of Hon'ble Bombay High Court by judgment dated 9.11.2011 has held that exemption from passing 'qualifying examination' shall be applicable to those Civil Engineering Assistants who have crossed the age of 45 years. Hon'ble High Court in Writ Petition no. 6329 of 1997 by judgment dated 18.6.2009 has held that a Civil Engineering Assistant can get exemption from passing departmental examination on completing age of 45 years. However, for promotion to the post of Junior Engineer, he is required to pass a professional examination and no exemption can be granted from passing the professional examination.

10. To sum up, Hon'ble High Court has given various judgments. In Writ Petition No. 6329 of 1997, a clear distinction is made between departmental examination, which a Civil Engineering Assistant is required to pass and from which exemption can be granted on reaching the age of 45 years vis-a-vis professional examination, which he is required to pass for promotion to the post of Junior Engineer. In W.P no 4915/2015 etc., Hon'ble High Court has held that in Zilla Parishad, cadres of Mistry, Muster Clerks, etc. were amalgamated to form a common cadre of Civil Engineering Assistant by G.R dated 5.8.2003. As the Civil Engineering Assistants in Zilla Parishad are governed by separate rules, the judgment may not have application to Civil Engineering



Assistants working in Water Resources & Public Works Departments. Judgment in W.P 3315/2012 etc., is about Civil Engineering Assistants in Maharashtra Jeevan Pradhikaran and for Civil Engineering Assistants in Irrigation Department. It was held that they will be eligible to get exemption from passing departmental examination on reaching the age of 45 years.

11. From these judgments, it is clear that it cannot be inferred that persons working in 13 cadres, which were eligible to be appointed as Civil Engineering Assistants will get benefits of higher pay scales of Junior Engineer, immediately after completion of 12 years in those cadres. The first step was to get absorbed as Civil Engineering Assistant, which was not automatic in Water Resources Department and Public Works Department.

12. This Tribunal (Aurangabad Bench) in O.A no 617/2014 by judgment dated 2.12.2015 has examined this issue threadbare. The Applicant was another Association of Civil Engineering Assistants in Water Resources Department. After examining various Government letters including letters dated 18.3.1998 and 18.6.1998, it transpired that though the aforesaid letters were said to have been issued in consultation with Finance Department, no records are available to substantiate that claim. There were no official records available showing that Finance Department had given approval to these letters. This raises serious doubts about the authenticity of these two letters.

13. This Tribunal has then examined the provisions of these letters in the light of G.R dated 8.6.1995. This G.R dated 8.6.1995 admittedly has been issued to give financial benefit to those, who are eligible for promotion and are unable to get that for want of available vacancies. The purpose of this G.R is not to grant financial benefits to all employees merely after completion of 12 years of service. Letters dated 18.3.1998 and 18.6.1998 have been issued in complete violation of provisions of G.R dated 8.6.1995. This Tribunal held that the pay scale of the post of Civil Engineering Assistant was higher than the pay scales of posts, which were merged to form composite cadre of Civil Engineering Assistants. Once this fact is established, G.R dated 8.6.1995, para 2(b) & 2(c) will make it clear that a person will be eligible to be given Time Bound Promotion, 12 years after he was appointed as Civil Engineering Assistant. The question of counting service in lower cadres to get the pay scale of Junior Engineer will not arise.

14. As regards communications dated 18.3.1998 and 18.6.1998, this Tribunal has observed as follows:-

“15. The fact about the authenticity of these communications dated 18.3.1998 and 18.6.1998 being doubtful is mentioned repeatedly in the affidavit in reply. Even if, for the sake of arguments, it is accepted that, they are contrary to the provisions contained in G.R dated 8.6.1995 and Circular dated 1.11.1995. In fact, the whole concept of Regular Service and higher pay grade is overturned. We agree with the contention

of the Respondents that, if that was the intention, a G.R or Circular would have been issued by G.A.D, who had issued G.R dated 8.6.1995, modifying the scheme. It is noteworthy that the post of C.E.A exist in other Department, besides Water Resources Department, e.g. in P.W.D and R.D.D. Authenticity of communications dated 8.3.1998 and 18.6.1998 does appear to be doubtful. Even if they are held to be genuine, they are contrary to the G.R dated 8.6.1995 and Circular dated 1.11.1995. Hon'ble Supreme Court in the case of Anita (supra) has held that:-

“Even if the above government instructions would have bestowed validity on the selection process, through which the private respondents came to be appointed, the same could not been acceded to, since government instructions in violation of the statutory rules are a nullity in law.”

16. In the present case Government instructions by communications dated 18.3.1998 and 18.6.1998 are null and void and they are issued in violation of G.R/Government Circular, which, though not statutory in nature, have been issued under Article 162 of the Constitution of India and have force of law.”

15. As regards those working on Work Charged Establishment, it has been held that their services cannot be counted for Time Bound Promotion. However, as Civil Engineering Assistants are not appointed on Work Charged

Establishment, and a person working in a lower cadre cannot be held eligible for Time Bound Promotion in the pay of Junior Engineer, this issue is not relevant at all.

16. This Tribunal has held that a person, who is appointed as Civil Engineering Assistant can only be given higher pay scale of Junior Engineer, after 12 years of service as Civil Engineering Assistant. Relief sought in O.A no 317/2014 that the Circulars dated 18.3.1998 and 18.6.1998 should be implemented cannot be granted. These Circulars do not appear to be authentic. As regards the other relief that those Civil Engineering Assistants who have crossed the age of 45 years may be granted exemption from passing the qualifying examination for the post of Junior Engineer, the Respondent no. 1 has stated in para 3 of the affidavit in reply dated 13.10.2014 as follows:-

“3 It is further submitted that the Government in Public Works Department vide Government Notification dated 1.1.1998 has published the Junior Engineer (CIVIL) Group-B non-gazetted in the Public Works Department and the Irrigation Department (Recruitment) Rules, 1998 as per the provision under rule 3(a) of said Rules the Civil Engineering Assistant who have passed the qualifying examination for the post of Junior Engineer conducted by the Engineering Staff College, Nasik having rendered not less than 3 years of a regular service in that post is eligible for being promoted to the post of Junior Engineer.”

Hon'ble High Court in Writ Petition no. 6929/1997 dated 18.6.2009 has held that those Civil Engineering Assistants who have not passed Professional Examination are not eligible to get promotion as Junior Engineer. Obviously, if a Civil Engineering Assistant is not eligible to get regular promotion as Junior Engineer, he is also not eligible to get Time Bound Promotion in the pay scale of Junior Engineer unless he passed the professional examination. However, in view of the judgment of Aurangabad Bench of High Court in Writ Petition no. 2894/2015 dated 29.1.2016, Government in Water Resources Department has issued G.R dated 16.9.2016, thereby granting exemption to Civil Engineering Assistant from passing the Professional Examination after attaining the age of 45 years. This G.R dated 16.9.2016 is now applicable for grant of promotion to the Civil Engineering Assistants, who have worked for three years in that post. This prayer is already granted by the State Government.

17. In O.A no 426/2014, Circular dated 1.11.2013 of P.W.D is challenged. Clause (3) of the Circular reads as under:-

“(३) जर एखादा कर्मचारी दि. १/१/१९८९ रोजी १४ संवर्गापेकी कोणत्याही एका पदावर कार्यरत असेल व त्याचे वयाच्या ४५ वर्षापर्यंत स्थापत्य अभियांत्रिकी सहाय्यक या पदावर समावेश झाले नसेल तर अशा कर्मचा-यास , तो ज्या दिवशी वयाची ४५ वर्षे पूर्ण करील त्या तारखेपासून त्याचे स्थापत्य अभियांत्रिकी सहाय्यक या पदावर समावेश करून त्यानंतर ३ वर्षांची सेवा झाल्यानंतर त्याला कनिष्ठ, अभियंता या पदावरील पदोन्नतीसाठी आवश्यक असलेल्या अर्हता परीक्षेतून सूट द्यावी.”

We have already held that a person will not be able to get absorbed as Civil Engineering Assistant unless he fulfills the conditions for such absorption as per G.R dated 31.1.1989. One main condition is passing the departmental examination. This Circular makes it clear that if such an employee is not absorbed in the post of Civil Engineering Assistant till he reaches the age of 45 years, he will be absorbed in the post of Civil Engineering Assistant on reaching the age of 45 years, exempting him from passing the departmental examination. After three years, he will be exempted from passing professional examination for the post of Junior Engineer. This Circular is in accordance with various judgments of this Tribunal and Hon'ble High Court and we are unable to accept the prayer of the Applicant to quash it.

18. The Applicant has challenged Circulars dated 21.11.2014 and 12.2.2015. These Circulars reiterate the provisions of Circular dated 1.11.2013. We see no reason to quash these Circulars. This Original Application is accordingly dismissed with no order as to costs.

