

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.853/2011.

(S.B.)

Amrutrao Babarao Deshmukh,
Aged about 57 years,
Occ-Service,
R/o Ward No.2, Motala, Tehsil-Motyala,
District-Buldana.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Irrigation,
Mantralaya, Mumbai-32.
2. The Superintending Engineer,
Akola Irrigation Circle, Akola.

Respondents

Shri S.S. More, the learned counsel for the applicant.
Shri H.K. Pande, the Ld. P.O. for the respondents.

**Coram:- Shri J.D. Kulkarni,
Vice-Chairman (J).**

JUDGMENT

(Delivered on this 14th day of November 2017).

Heard Shri S.S. More, the learned counsel for the applicant and Shri H.K. Pande, the learned P.O. for the respondents.

2. The applicant came to be appointed as Mokadam in 1983. He was promoted as Muster Clerk on 1.3.1986. He has completed 12 years of continuous service as Muster Clerk. On 1.3.1998, he was

given time bound promotion and was kept under the pay scale of Rs. 4000-6000. Instead of Rs. 5500-9000.

3. It is the case of the applicant that, on 23.8.2010, the Government issued a Circular whereby it was made clear that those who have crossed the age of 45 years as on the date of promotion need not undergo the requisite training or to pass the qualifying examination and it is stated that the pay scales of the Muster Clerk should be fixed in the pay scale of Rs. 5500-9000 as applicable to the Junior Engineers on the ground of time bound promotion. The applicant, therefore, made a representation on 10.1.2011 and requested for the said pay scale. His request has, however, not been considered. The applicant is claiming declaration that he is entitled to the pay scale of Rs. 5500-9000 as applicable to the Junior Engineers w.e.f. 1.3.1998 i.e. the date on which he was given time bound promotion and to direct the respondents to pay difference and consequential benefits.

4. Respondent Nos. 1 and 2 have submitted that the Circular dated 23.10.2010 (Annexure A-2) has been issued by the Department of Rural Development and Water Conservation, Mantralaya, Mumbai for giving concession to the Civil Engineering Assistants working in the Zilla Parishad from passing the qualifying examination of Junior Engineer after completion of 45 years. The said

circular is not applicable to the Civil Engineering Assistants in Water Resources Department. It is stated that the applicant was appointed as a Labour, but on daily wages. His services were regularized after five years and he was appointed on the post of Mokadam on C.R.T.E. Thereafter he was promoted as Muster Clerk and has worked as Muster Clerk till his retirement. He is not Civil Engineering Assistant and, therefore, he cannot claim the pay scale of Junior Engineer.

5. It is submitted that in O.A. No.1005/2010, in para No.10 of the order it has been observed that since the nature of work of Muster Clerk is different, the applicant cannot plea for exemption. A copy of the order is placed on record at Annexure R-3.

6. It is stated that the applicant was given time bound scale after he rendering 12 yearsq continuous service as per G.R. dated 8.6.1995 and second time bound promotional pay scale on 1.3.2010 as per G.R. dated 20.7.2001. The applicant never worked as Civil Engineering Assistant nor he was absorbed in the said post and, therefore, he cannot claim promotion / promotional pay scale of the post of Junior Engineer as per the Recruitment Rules dated 26.2.2002.

7. The learned P.O. has invited my attention to the Recruitment Rules called as, %Junior Engineer (Civil), Group-B (non-gazetted) in the Public Works Department and the Irrigation

Department (Recruitment) Rules, 1998+. As per rule 3 of the said Rules, appointment to the post of Junior Engineer (Civil), Group-B can be made either by promotion of a suitable person on the basis of seniority subject to fitness from amongst the persons holding the post of Civil Engineering Assistant. Rule 3 of the said Rules is as under:-

Appointment to the post of Junior Engineer (Civil), Group-B (non-gazetted) in the Public Works Department shall be made either,-

- (a) By promotion of a suitable person on the basis of the seniority subject to fitness from amongst the persons holding the post of Civil Engineering Assistant who have passed the qualifying examination for the post of Junior Engineer conducted by the Engineering Staff College, Nashik having not less than three years regular service in that post; or
- (b) By nomination from amongst candidates who,
 - (i) are not more than 30 years of age,
 - (ii) possess a three years diploma in Civil Engineering recognized by Government or any other qualification as equivalent thereto.+

The applicant does not possess diploma in Civil Engineering nor he is Civil Engineering Assistant and, therefore, admittedly he is not qualified to be promoted to the post of Junior

Engineer. So far as the G.R. giving exemption from passing qualifying examination on attaining the age of 45 years is concerned, the said G.R. is applicable to the Zilla Parishad. In para 10 of the judgment in **O.A. No. 1005/2010 dated 23.2.2011 of this Tribunal at Mumbai in case of D.S. Sawant V/s State of Maharashtra and others**, it is has been observed as under:-

It is seen that the Water Resources Department was not a party to the decision of the Aurangabad Bench of the Tribunal cited by the applicant. Also, this fact of the nature of the work being different in the Water Resources Department and the Rural Development Department was not pleaded or discussed before the Aurangabad Bench. As such, I find that it would not be proper to apply the judgment of the Aurangabad Bench here, which needs to be distinguished on the above grounds. Considering the arguments put forth by the respondents, since the nature of work is different, the applicant cannot plead that because Zilla Parishad employees had been exempted, he should also be exempted, though it would be violative of the recruitment rules framed under Article 309 of the Constitution of India, I, therefore, hold that the applicant is not entitled to exemption from passing the requisite examination, before grant of promotion.+

8. In view of this, it will be clear that the G.R. granting exemption to the employees of Zilla Parishad from passing qualifying examination to the post of Junior Engineer applicable to the employees working in Water Resources Department and, therefore, the applicant cannot take advantage of the G.R. dated 23.8.2010.

9. The pay scale of the Junior Engineer is applicable to those qualified Civil Engineering Assistants who have completed more than 12 years as Civil Engineering Assistants. Admittedly, the applicant has not worked as Civil Engineering Assistant and he got retired from the post of Muster Clerk. Two time bound promotions are already granted to the applicant and, therefore, he cannot seek time bound promotional scale to the post of Junior Engineer. The learned counsel for the applicant has placed reliance on the judgment delivered in W.P. No. 4094/2001 alongwith other writ petitions delivered by the Honble High Court, Bench at Nagpur on 14.6.2011 and the judgment of the Honble High Court, Bench at Nagpur in W.P. No. 3162/2012 on 19.9.2013 in case of K.P. Dane V/s Zilla Parishad and others. These judgments are not applicable to the present set of facts. O.A. No. 344/2014 passed by this Tribunal on 5.12.2014 also is also cited. Facts of the said cases are not analogous with the present set of facts and, therefore, this citation is also not applicable to the present set of facts. It is material to note that, the applicant was not granted the pay scale of

Rs.4000-6000 w.e.f. 1.3.1998. It is his case that he should have been pay scale of Rs. 5500-9000 instead of Rs. 4000-6000 w.e.f. 1.3.1998. The applicant has not challenged the order fixing his pay fixation w.e.f. 1.1.1998 till filing of this O.A. in 2011 nor he has challenged the said order.

10. From the discussion in foregoing paras, it will be thus crystal clear that the applicant was never absorbed or appointed as Civil Engineering Assistant and admittedly he is not eligible to be promoted as Junior Engineer as per the recruitment rules. He cannot be granted exemption since the G.R. on the basis of which he is claiming exemption from passing qualifying examination to the post of Junior Engineer, is not applicable to him. In view of this, applicant's claim for pay scale of Junior Engineer is not at all tenable. Hence, the following order:-

ORDER

O.A. stands dismissed with no order as to costs.

Dt. 14.11.2017.

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

