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MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO. 904/2012.

3C Miss Saroj Babarao Kamble,
Aged about 30 years, Occ : Service,
R/o 26, Vrundavan Society,
Shrikrishna Nagar, Darwha Road,
Yavatmal.

Applicant.

Versus

- 1C 1) The State of Maharashtra
through its Secretary,
Department of Irrigation,
Mantralaya, Mumbai-32.
- 2) The Superintending Engineer and
Zonal Officer, Vigilance Cell,
Water Conservation Deptt. Amravati.

Respondents

Shri S. N.Gaikwad, Advocate for the applicant.

Shri A.P. Sadavarte, P.O. for respondents.

ORIGINAL APPLICATION NO. 933/2012.

3C Miss Sheetal Ramdas Jadhav,
Aged about 28 years, Occ : Service,
R/o Pradhanmatri Gram Sadak Yojana,
In front of Akashwani Bhavan,
Z.P. Karmachari Bhavan, Campus, Akola.

Applicant.

Versus

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


- 2) The Superintending Engineer and
Zonal Officer, Vigilance Cell,
Water Conservation Deptt. Amravati.

Respondents

Shri ~~N.B. Rathod~~, Advocate for the applicant.

Shri A.P. Sadavarte, P.O. for respondents.

ORIGINAL APPLICATION NO. 940/2012.

 Ku. Vidya Arun Tikte,
Aged about 25 years, Occ : Nil,
R/o Pathrut, Tq. Bhoom,
District Osmanabad.

Applicant.

Versus

- 1) The State of Maharashtra
through its Secretary,
Department of Water Resources,
Mantralaya, Mumbai-32.
- 2) The Superintending Engineer and
Circle Officer, Vigilance Unit, Amravati Circle,
Water Resources Deptt.,
Shivaji Nagar, Amravati.
3. The Executive Engineer,
Minor Irrigation Department, Buldhana.
4. The Superintending Engineer,
Irrigation Project Division,
Opp. Ganpati Mandir,
Tata Ground, Buldhana.

Respondents

Shri P.D. Meghe, Advocate for the applicant.

Shri A.P. Sadavarte, P.O. for respondents.

Coram:- B. Majumdar, Vice-Chairman and
S.S.Hingne, Member (J).

Dated: - ^{28th}~~22nd~~ April 2016.

ORDER

Per:Vice-Chairman

The applicants in these O.As have approached the Tribunal with the common grievance that their services as Civil Engineering Assistants (C.E.As) have been terminated as they were not found qualified as per the Recruitment Rules.

2. The applicants all hold the Certificate~~s~~ of Construction Supervisor issued by the Maharashtra State Board of Vocational Examination. The Recruitment Rules for the post of C.E.A., Group-C in the Irrigation Department were notified under Article 309 of the Constitution on 26.2.2002. Rule 3 (b) deals with the condition of eligibility for appointment through nomination and it is specified that a candidate is required to have passed the one year C.E.As' course conducted by the Government Technical Institute of the Government Department of Technical Education. On 26.5.2010, these rules were further amended and it was specified that the candidates holding any of the following qualifications will be eligible:

- (A) Civil Engineering Assistant's one year course conducted by the Government Technical Institute of the Technical Education Department of the Government; or
- (B) Two years Draftsman (Civil) course of Industrial Training Institute; or
- (C) Two years Surveyors course of Industrial Training Institute; or
- (D) Civil Engineering Contracting Course of Industrial Training Institute; or
- (E) Degree or Diploma in Civil Engineering Or equivalent qualification thereto.

3. There were further amendments to these rules on 25.7.2012. As per ^{these} ~~this~~ amendment, the following qualifications were prescribed replacing the qualifications as above:

- (b) One year's Diploma course for C.E.A. conducted by the Government Technical Institute of the Government Department of Technical Education or
A Degree or Diploma in civil engineering or its equivalent.

4. On 13.1.2012, the Chief Engineer, Irrigation Department, Amravati and President, Regional Selection Committee, Amravati alongwith the Superintending Engineer, Vigilance Cell, Amravati and Member Secretary of the Selection Committee (R.2) issued an

advertisement for 283 posts of C.E.As. Their minimum qualification prescribed as per the advertisement is the same as in the amendment rules of 25.7.2012 as above. On 29.10.2012, the applicants came to be appointed as C.E.A. On 9.11.2012, their services came to be terminated on the ground that the one year's certificate of Construction Supervisor held by them does not fulfill the eligibility conditions of recruitment for the post of C.E.A. in the Water Conservation Department. The applicants have challenged the legality of this order.

5. The applicants submit that the certificate of Construction Supervisor held by them is equivalent to the course of C.E.A. as per the letter dated 17.3.2006 issued by the Department of Higher and Technical Education to the Superintending Engineer, P.W.D. Circle, Amravati (P.56 of the P.B.) wherein it is stated that the certificate of Construction Supervisor is equivalent to the course of C.E.A. and hence holders of such a certificate can be absorbed in the post of C.E.A. As per G.R. dated 11.3.2008 issued by the Government in P.W.D. for appointment to the post of C.E.A. in P.W.D., the certificate of Construction Supervisor is declared to be equivalent to the course of C.E.A. As per the G.R. of 23.9.2008 issued by the Department of Rural Development and Water Conservation, the certificate of Construction Supervisor is declared as equivalent to the course of C.E.A. for appointment to the post in Zilla Parishad. The applicants

rely on the G.R. dated 29.9.2012 issued by the Government in Higher and Technical Education (Annexure-15 in O.A. No. 940/2012) where it is declared that the certificate of Construction Supervisor is equivalent to various posts conducted by the Industrial Training Institute including that for the Surveyors, Building Maintenance and Mason (Building Construction). Thus on this basis, the applicants' qualification should be deemed to be equivalent to the Diploma in Civil Engineering. It is also the submission of the applicants that their appointment was after due verification and scrutiny of all courses in regard to their eligibility for the post. Hence, their termination from service is without adequate reasons. The applicants finally submit that they could not have been terminated from service without being granted an opportunity to defend themselves as not even a show cause notice was issued. For this, they rely on the order of the Hon'ble Supreme Court in **Basudeo Tewari V/s Sido Kanhu University and others [1998 (8) SCC 194]** and the order of the Hon'ble the High Court, Bombay in **Rajendra Vitthalrao Sambhe V/s Zilla Parishad, Wardha and one another, (in W.P. No. 2626/2012 decided on 16.4.2013) (unreported)**

6. Respondent No.1, Secretary, Water Resources and respondent No.2, Superintending Engineer, Vigilance Cell, Amravati have filed their reply. They submit as follows:

"It is submitted that as per existing Recruitment Rules of C.E.A. in Water Resources Department, the educational qualification for the post of C.E.A. by direct recruitment is passing of S.S.C. plus—

- (1) One year course of Civil Engineering Assistant or
- (2) Degree or Diploma in Civil Engineering or equivalent.

It is submitted that the word 'equivalent' used above is for Degree or Diploma in Civil Engineering and, not for one year courses for C.E.A. It is submitted that the Water Resources Department has never issued any G.R. prescribing certain course equivalent to one years course of Civil Engineering Assistant.

It is submitted that, the G.R. dated 11.3.2008 (Ex.A.5 to the O.A.) is not applicable as this Department has its own Recruitment Rules for the said post. The equivalence mentioned above mentioned in G.R. for the incumbent on the post of C.E.A. in P.W.D. only as specified in first para of that G.R."

They further submit that the Department of Water Resources, in consultation with the experts, i.e., the Chief Engineers from the field, has consciously decided not to include one year's course of Construction Supervisor as a qualification for the post of C.E.A. and this was done in 2006. As the applicants holding the certificate of

Construction Supervisor did not possess the requisite qualification for the post of C.E.A., their services were terminated.

7. Shri S.N. Gaikwad, the learned counsel for the applicants in O.A. Nos. 904 and 933 of 2012 and Shri P.D. Meghe, the learned counsel for the applicant in O.A. No. 940 of 2012 in their submissions basically reiterated what the applicants have averred in the O.As.

8. Shri A.P. Sadavarte, the learned P.O. vehemently opposed the O.As by ^{submitting} ~~submitting~~ that the Water Resources Department had taken a clear and conscious decision that the certificate of Construction Supervisor cannot be deemed to be equivalent to a Degree or Diploma in Civil Engineering for the post of C.E.A. in the Water Resources Department. The applicant has relied ^{on} various decisions taken in respect of the post of C.E.A. in Zilla Parishad and P.W.D. where the nature of work and requirement of the post of C.E.A. are quite different. He relied upon the notings in the file of the Government in Water Resources Department (Annexure R.5 in O.A. No.904/2012). The Government had obtained the views of the Chief Engineers and the Superintending Engineers working all over the State in the Water Resources Department on this issue. Keeping in view the general view of the experts from the field that the certificate course in Construction Supervisor cannot be deemed to be equivalent

to a Degree / Diploma in civil engineering, ~~had taken~~ ^{was taken} a decision at the level of the Secretary to the Government that the said course cannot be deemed to be equivalent to a Degree / Diploma in civil engineering. He submitted that at no time in the past the Water Resources Department had taken any decision to grant any equivalence to the above certificate for the purpose of qualifying for the post of C.E.A. As the applicants do not fulfill the eligibility condition of the 2002 amended recruitment rules, they ~~found~~ ^{were} found to have been wrongly appointed and hence their services were terminated. In regard to the issue that no show cause notices were issued to the applicants prior to their termination, the learned P.O. submitted that the termination orders were issued within less than two months of appointment and hence there was no need to issue any such notice prior to termination. He further submitted that the applicants have only been granted temporary appointments and were not confirmed in service. In terms of Rule 5 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. Explanation No. VIII (b), their termination on the ground unconnected with their conduct does not amount to penalty and hence for their removal proceedings under Rule 8 of the Discipline and Appeal Rules are not required to be followed.

9. We find that the qualifications for the post of C.E.A. as specified in the advertisement are as per the amended rules dated 25.7.2012 which specify the requirement to be one year's course for C.E.A. conducted by the Government Technical Institute or a Degree / Diploma in civil engineering or its equivalent. It is the applicants' submission that the one year certificate course in Construction Supervisor that they hold is equivalent to the above course for C.E.A. For this, as we have seen earlier, the applicants rely on the following:

- (a) Communication dated 17.3.2006 from the Government in Higher and Technical Education addressed to the Superintending Engineer, PWD Circle, Nagpur.
- (b) G.R..dated 11.3.2008 of the PWD.
- (c) G.R. of 23.9.2008 issued by Department of Rural Development and Water Conservation.
- (d) G.R. dated 28.9.2012 of the Department of Higher and Technical Education.

As we have already stated, these G.Rs relate to the issue of equivalence of the certificate of Construction Supervisor with the one year course in C.E.A. so far as the post of C.E.A. in the P.W.D. and Zilla Parishad are concerned. The applicants could not produce any document to demonstrate that a similar decision was taken by the Government for the post of C.E.A. in the Water Resources Department.

10. The learned P.O., on the other hand, has drawn our attention to the notings in the file of the Government in Water Resources Department (Annexure R.5 in O.A. 904/2012). Perusal of these noting reveals that the Secretary, Water Resources Department, after taking into consideration the majority view of the Chief Engineers and the Superintending Engineers took a decision that for the Water Resources Department, the certificate course in Construction Supervisor cannot be deemed to be equivalent to that for the course of C.E.As. We are of the view that granting of equivalence between different qualifications ^{is} as a technical matter which is best left to the Government to decide and the Tribunal should avoid entering into the area. As the Government has taken a consensus decision not to treat the one year course in Construction Supervisor as equivalent to that for the C.E.As, we find no reason to interfere in the matter.

11. As regards the termination of the applicants without issuing any notice, the learned P.O. has stated that as the applicants were terminated within less than two months of the appointment, it was not necessary to issue any such notice prior to termination. He has also relied on the Explanation VIII (b) under Rule 5 of the MCS (D&A) Rules, 1979 wherein it is stated that termination of service of a temporary Government servant on the ground unconnected with his conduct does not amount to penalty and hence the proceedings laid

down as per rule 8 in case of major penalty like termination is not required to be followed. The learned P.O. has stated that this provision is applicable to the applicants as they were temporary employees and were not confirmed as yet.

12. In **Basudeo Tewari V/s Sido Kanhu University and others [1998 (8) SCC 194]**, the petitioner was appointed as Lecturer in 1986. On being found that his appointment was irregular, his services were terminated in 1993. Hon'ble the Supreme Court had held that the termination could not have been done without serving a notice on the employee.

13. In **Rajendra Vitthalrao Sambhe V/s Zilla Parishad and one another, (in W.P. No. 2626/2012 decided on 16.4.2013)**, the petitioner was appointed as a Shikshan Sevak in 2006 and was terminated from service in 2010, as his appointment was based on a false certificate of being an ex-serviceman. Hon'ble the High Court, relying on **Basudeo Tewari** held that the termination could not have taken place without granting any opportunity to the petitioner to defend himself, as the same is violative of the principles of *audi alteram partem*.

14. Hence, in view of the clearly laid down law that no employee can be terminated from service without complying with the principles of natural justice, i.e., by granting him an opportunity to

defend himself, we hold that even if the applicants were found not to be qualified for the post as per the recruitment rules, the respondents could not have terminated their services without at least issuing them show cause notices and an opportunity to be heard.

15. We therefore hold that the impugned orders of termination are not legally tenable. Hence, the O.As stand disposed of in the following terms:

- (a) The O.As are partly allowed.
- (b) The impugned orders of termination dated 9.11.2012 are quashed and set aside.
- (c) The respondents are directed to reinstate the applicants to the post of Civil Engineering Assistants.
- (d) The applicants will not be entitled to any wages for the period for which they were out of service. However, they will be entitled to the benefit of continuity in service from the date of their original appointment.
- (e) The respondents are at liberty to take appropriate action with regard to the applicants' ^{termination} ~~continuity~~ in service as per the provisions of M.C.S. (D & A) Rules, 1979.
- (f) There shall be no order as to costs.

True Copy

S. S. Jalwan (16/11/2016)
 Assistant Registrar
 Maharashtra Administrative Tribunal
 Nagpur

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