

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL,**

**NAGPUR BENCH, NAGPUR**

**ORIGINAL APPLICATION NO.758 /2013.** (S.B.)

Satish Devidasrao Choudhari,  
Aged about 51 years,  
Occ-Service,  
R/o Govt. Residential Qtr.No.37, Tope Nagar,  
Amravati.

**Applicant.**

**-Versus-**

1. The State of Maharashtra,  
Through its Secretary,  
Department of Public Works,  
Mantralaya, Mumbai-32.
2. The Superintending Engineer,  
Public Works Circle, Amravati.

**Respondents.**

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**ORIGINAL APPLICATION NO.761 /2013.**

Pradeep Tulshiramji Sonkusre,  
Aged about 51 years,  
Occ-Service,  
R/o Kesar Apartment,  
Jairam Nagar, Amravati.

**Applicant.**

**-Versus-**

1. The State of Maharashtra,  
Through its Secretary,  
Department of Public Works,  
Mantralaya, Mumbai-32.
2. The Superintending Engineer,  
Public Works Circle, Amravati.

**Respondents.**

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**ORIGINAL APPLICATION NO.762 /2013.**

Prabhakar Vitthalrao Badre,  
Aged about 51 years,  
Occ-Service,  
R/o Pravin Nagar, Behind VMV College,  
Amravati.

**Applicant.**

**-Versus-**

1. The State of Maharashtra,  
Through its Secretary,  
Department of Public Works,  
Mantralaya, Mumbai-32.
2. The Superintending Engineer,  
Public Works Circle, Amravati.

**Respondents.**

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**ORIGINAL APPLICATION NO.390 /2014.**

Nitendra Kunwarchand Jain,  
Aged about 46 years,  
Occ-Service,  
R/o Shriram Colony, Near Nag Temple  
New Railway Station, Akoli Road, Amravati.  
(Presently posted in the office of  
Sub-Divisional Engineer, PWD Sub-Division,  
Morshi, Distt. Amravati.

**Applicant.**

**-Versus-**

1. The State of Maharashtra,  
Through its Secretary,  
Department of Public Works,  
Mantralaya, Mumbai-32.
2. The Superintending Engineer,  
Public Works Circle, Amravati.

**Respondents.**

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Shri Pravin S. Patil, the learned counsel for the applicants in O.A. Nos.758,761 and 762 of 2013.

Shri S.M. Pande, the Ld. counsel for the applicant in O.A.390/2014.

Shri P.N. Warjekar, the Ld. P.O. for the respondents in all O.As.

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

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### **JUDGMENT**

(Delivered on this 18<sup>th</sup> day of January 2018).

Heard Shri Pravin S. Patil, the learned counsel for the applicants in O.A. Nos. 758,761 and 762 of 2013 and Shri S.M. Pande, the Ld. counsel for the applicant in O.A.No. 390/2014.

2. All these O.As are being disposed of by this common judgment, since the issue involved in all these O.As is similar.

3. The applicants were working the Public Works Department and were doing the work of Muster Clerk. However, the post of Muster Clerk was not available therefore, they were being paid as Labourers.

4. The Government issued a G.R. dated 29.9.2003 and had taken policy decision to pay as per the post "कायानुसार हुदा व हुयानुसार वेतनणी". It was decided to grant benefit of the said G.R. to 5033 labourers working in different departments including the department of the applicants. In pursuance of the G.R. dated 29.9.2003, another G.R. was issued on 20.2.20104 by the Government

of Maharashtra. By the said G.R., benefits are granted to various labourers, in all 271 labourers including the applicants. The applicants stand at Sr. No. 53, 212, 232 and 80 respectively in the said list and were given salary of रोड कारकुन / हजेरि लिपिक. The G.R. dated 29.9.2003 was, therefore, made applicable to the applicants and since they were discharging the duties of Clerk since the date of their initial appointment, pay scale of Road Karkun was made applicable to them. It seems that the applicant at Sr. No. 53 got salary of Road Karkun whereas the applicants at Sr. Nos. 212 and 233 in the said list got pay scale of Hajeri Lipik.

5. The applicants are well qualified and they have completed the age of 45 years and, therefore, they are entitled to be accommodated in the category of Civil Engineering Assistant. The applicants, therefore, requested the respondent authorities to absorb in the category of Civil Engineering Assistant. However, the said request was rejected by respondent No.1 vide order dated 7.3.2011 on the ground that the applicants got the status of Muster Clerk from 29.9.2003 and earlier the services rendered by them cannot be counted and as such they were not entitled to be absorbed as Civil Engineering Assistants.

6. According to the applicants, they have received information, from which it seems that identical employees like the applicants who were junior to the applicants, have been absorbed in the category of Civil Engineering Assistant and are enjoying the benefit of absorption. However, the applicants' claim is not considered. The applicants have, therefore, filed these O.As. The applicants are claiming directions to the respondents to absorb or include them in the category of Civil Engineering Assistants in Public Works Department with effect from the date on which they had crossed the age of 45 years and are entitled to the post with all consequential benefits of service including difference of salary.

7. The respondents have filed reply affidavit in O.A. No. 761/2013 and the same has been adopted in other O.As. Respondent Nos. 1 and 2 submitted that as per the Recruitment Rules for absorption to the post of Civil Engineering Assistant dated 3.3.2008, person, who as on 1.1.1989 and was holding the cadre specified in Schedule-A of Rule 3 (1) and possessing requisite qualification as mentioned in Schedule-B of the said rule is only eligible for absorption in the post of Civil Engineering Assistant. At the time of granting of pay scale to the post, the applicants were C.R.T.E. labourers. They were not holding required cadre nor holding required qualification specified in the rules and, therefore, the applicants' claim was rejected

by communication dated 7.3.2011 (Annexure R-2). It is stated that the applicants have acquired the status of Muster Clerk in the year 2003 and thereafter they have acquired requisite qualification. Mere completion of the age of 45 years will not exempt the applicants from passing requisite qualifying examination as per rules. So far as employees who were absorbed, it is stated that those employees had acquired requisite qualification as on the date applicable and their cases cannot be compared with that of the applicants.

8. The applicants have also filed additional affidavit / rejoinder and have placed on record some of the notifications / G.Rs whereby exemption has been granted to the employees from passing qualifying examination and submitted that the applicants' case shall also be considered. If the applicants' cases are not considered, it will be discriminatory action on the part of the respondents.

9. The respondents have filed affidavit in reply to the additional affidavit / rejoinder filed by the applicants and denied that the applicants were being discriminated.

10. The learned counsel for the applicants submits that the impugned order rejecting the applicants' claim i.e. order dated 7.3.2011 is illegal. It is stated that similarly situated employees have been absorbed. But the applicants have not been considered. The learned counsel for the applicants has invited my attention to the

orders whereby three persons were absorbed vide order dated 16.2.2006 and four were absorbed vide order dated 31.7.2006. Before considering the fact as to whether similarly situated persons like the applicants have been absorbed or not or whether the applicants have been discriminated or not, it is necessary to consider the applicants' case on merit. The learned P.O. has invited my attention to the Recruitment Rules. The said Recruitment Rules are placed on record at page No.106 in O.A. No. 758/2013. These rules are called, 'Civil Engineering Assistant, Group-C in Public Works Department (Recruitment) Rules, 1998+'. Rule 3 is material so far as the cases of the applicants are concerned. The said rule says that the appointment to the post of Civil Engineering Assistant, Group-C in Public Works Department shall be made by, (i) absorption and (ii) by nomination. Admittedly, all the applicants are claiming the post of Civil Engineering Assistant by absorption and not by nomination and, therefore, Rule 3 (1) (i) (ii) and (iii) is relevant. The said relevant rule reads as under:-

Appointment to the post of Civil Engineering Assistant, Group-C, in Public Works Department shall be made either:-

(a) by absorption of,--

(i) a suitable person from the cadres mentioned in Schedule-A and possessing any of the qualifications mentioned in Schedule-B on the 1<sup>st</sup> January 1989; or

- (ii) a suitable person from the cadres mentioned in Schedule-A on the basis of seniority subject to fitness from amongst the persons who have passed the Civil Engineering Assistant's qualifying examination conducted by the Maharashtra Engineering College, Nashik, of the Government.
- (iii) persons who are in the Govt. service, in the Public Works Department as on the 1<sup>st</sup> January 1989, and who have passed the Civil Engineering Assistant's one year course examination conducted by the Govt. Technical Institute of Technical Education Department of Govt.; shall be absorbed as Civil Engineering Assistant, if they are willing to work as Civil Engineering Assistant irrespective of their cadre and post in the Public Works Department.+

11. The aforesaid Rule 3 for absorption clearly shows that only suitable persons from the category mentioned in Schedule-A possessing any of the qualifications mentioned in Schedule-B as on 1.1.1989 can be absorbed or a suitable person from the cadres mentioned in Schedule-A on the basis of seniority from amongst the persons who have passed Civil Engineering Assistant's qualifying examination conducted by Maharashtra Engineering College, Nashik of the Government, can be absorbed, or persons who are in Government service in P.W.D. as on 1.1.1989 and who have passed Civil Engineering Assistant's one year course examination conducted by Govt. Technical Institute of Technical and Education Department of Govt., can be absorbed, provided they are willing to work as Civil



Engineering Assistant. Thus for absorption on the post of Civil Engineering Assistant, either of aforesaid three conditions was necessary.

12. According to the applicants, they were working in the department and though, they were doing the work of Clerk, they were being paid a labourers, since the post of Clerk was not available and, therefore, by virtue of G.R. dated 29.9.2003, they have been given the pay scale of Clerk. The learned counsel for the applicants, therefore, submits that the applicants can be treated as Clerks from the date of their initial appointment. However, such analogy cannot be applied for the simple reason that the applicants have been granted benefit of G.R. dated 29.9.2003 w.e.f. 20.2.2004 as per Annexure A-2. In condition No.2 of the said order, it is clearly mentioned that the G.R. will be applicable from the date of issuance of the order i.e. from 20.2.2004 and, therefore, applicants case cannot fall under Rule 3 (a) (i) of the Rules. Even otherwise, it is necessary to see as to whether the applicants have acquired requisite qualification as mentioned in Schedule-B of the Rules of 1998.

13. As per Schedule-B, persons to be absorbed as Civil Engineering Assistant must have acquired the qualification as under :-

- (i) Have passed Civil Engineering Assistant's Course examination conducted by Govt. Technical Institute.

- (ii) have passed professional examination of Sub-Overseer.
- (iii) have passed Civil Engineering Assistant's qualifying examination.
- (iv) have passed diploma in Civil Engineering.
- (v) have passed two years Draftsman (Civil) course examination of Industrial Training Institute.
- (vi) have passed Surveyor's course examination of Industrial Training Institute.
- (vii) have passed Civil Engineering Contracting Course examination of Industrial Training Institute.

14. It is, therefore, necessary to see as to whether the applicants have acquired this qualification. The learned P.O. has invited my attention to the impugned letter whereby the applicants' claim has been rejected. The said letter is at Annexure A-7 at Page No.72 in O.A. No. 758/2013. In the said letter, it has been mentioned that the person to be absorbed as Civil Engineering Assistant has to acquire qualification as per Schedule-B or has to pass one year examination as required under Rule 3 (a) (iii) of the Rules. It is stated that since the applicants have not acquired requisite qualification, they are not entitled to be absorbed.

15. The learned counsel for the applicants submits that the applicants have been exempted from appearing the qualifying

examination required for Civil Engineering Assistant, since they have attained the age of 45 years. However, the Recruitment Rules nowhere show any provision for granting such exemption. In such circumstances, even for argument sake, it is accepted that such exemption was granted to some persons including the applicants, that itself will not qualify the applicants for the post of Civil Engineering Assistant by absorption. As per the Recruitment Rules, a person has to acquire requisite qualification by passing requisite examination mentioned in Schedule-B. Admittedly, the applicants have not passed such examination.

16. The learned counsel for the applicants submitted that all the applicants have undergone five months training required under the Rules and, therefore, they are entitled to be absorbed as Civil Engineering Assistant. Perusal of Rule 3 (i) and (iii) of the Rules shows that the person has to pass Civil Engineering Assistant's qualifying examination conducted by Maharashtra Engineering College, Nashik, so also they must have passed Civil Engineering Assistant's one year course examination conducted by Govt. Technical Institute of Technical Education Department of Govt. of Maharashtra. Even for argument sake, it is accepted that the applicants have undergone five months training as stated by the learned counsel for the applicants. There is nothing on record to show that they have

undergone one year's course examination as stated under Rule 3 (iii) of the Rules and, therefore, the applicants have not acquired the qualification as required under Rules 3 (i) (ii) and (iii) of the Rules of 1998. The applicants have not placed on record any documentary evidence to show that they have acquired either of these qualifications as required under Rule 3 (a) of the Rules of 1998.

17. The applicants have filed rejoinder and submitted that on 24.8.1998, the Superintending Engineer, P.W. Circle, Amravati made communication to the Dy. Secretary, Govt. of Maharashtra and thereby informed that certain employees, whose details were not forwarded on earlier occasions and, therefore, separate list was being sent to the Government. It is stated that in the said list, it has been stated that the applicant in O.A. No.758/2013 Satish Devidasrao Choudhari was carrying out the working of Clerk from 10.8.1982. In the additional affidavit filed in O.A. No. 761/2013, it is stated by the applicant Pradeep Tulshiramji Sonkusre that the applicant came to know about that final gradation list of Civil Engineering Assistants from 1.1.1989 to 31.12.2004 and in the said list, identical persons like the applicants who were appointed on the post of Muster Clerk on C.R.T.E. basis, have been given the status of Civil Engineering Assistants. Perusal of the G.R. dated 2.1.2016 filed in O.A.No.761/2013 shows

that the Government has modified the list of employees to be absorbed as Civil Engineering Assistants.

18. The respondents, however, filed reply affidavit to the rejoinder-affidavit filed by the applicants. Similar rejoinder affidavit has been filed in O.A. No. 762/2013 also.

19. In these three O.As, the respondents have filed reply affidavit to the rejoinder filed by the applicants and denied that the employees who have been absorbed as Civil Engineering Assistants subsequently vide G.R. dated 2.1.2016, are similarly situated persons like the applicants. In para 4 of the said reply affidavit, it has been stated that the provision of exemption from passing qualifying examination is applicable only to the employees who hold the requisite qualification for the post of Civil Engineering Assistants and since the applicants do not possess requisite qualification, even if they are exempted from passing the said examination, they will not be entitled to absorption to the post of Civil Engineering Assistants.

20. The learned counsel for the applicants has invited my attention to one notification dated 8.8.2001 which is filed at page No.42 in O.A. No. 758/2013. This notification is nothing but rules of conduction of requisite qualifying examination and known as, "Civil Engineering Assistantsq Qualifying Examination (Departmental Examination and Training) Rules, 2001". The learned counsel for the

applicants has invited my attention to Rule 10 (2) which reads as under :-

४०) सूट (२) एखाऱ्या कमऱ्याऱ्याला ढ्रवा ढथापऱ्य अऱभ्याऱंकऱ सहायकाला ढाऱ्यऱ क पऱरऱेसह पऱरऱ ढ उऱीणऱहोऱ्यातून सूट देऱ्यात येईल जर;

(क) तो ढथापऱ्य अऱभ्याऱंकऱ सहायक या पदावर आधीच कायम असेल तर,

(ख) ढ्याचे वय ४५ वषऱेऱ्याले असेल तर

परंतु अशी सूट ढळऱानंतर ढयम ९ ढ्या तरतुदऱुसार ढ्याने गमावलेलऱ ढयेऱठता ढ्याला पुऱहा ढळणार नाहऱ

21. The learned counsel for the applicants submits that this rule says about the provision of granting exemption from passing requisite qualifying examination. Plain reading of the aforesaid rule, however, clearly shows that the said exemption is applicable / practical examination only for subsequent examination provided the examinee got more than 50% marks in one of the papers. Said rule is not applicable at all to the cases of the applicants.

22. The learned counsel for the applicants also invited my attention to the G.R. dated 1.7.2008 whereby exemption have been granted to the employees from passing qualifying examination. Similar exemption has been granted again as per Annexure A-9 in O.A. No. 758/2013. The said letter, however, shows that the persons mentioned in the said letter have completed their training and

thereafter crossed the age of 45 years. It, therefore, cannot be said that the cases of those persons are similar to that of the present applicants.

23. In the impugned order rejecting the claim of the applicants, respondent No.1 has clearly stated that the applicants are not eligible, since they have not passed the qualifying examination as required as per Rules of 1998 and secondly they cannot be exempted and absorbed only on the basis of exemption from passing the said examination. Even for argument sake, it is accepted that some of the employees were absorbed, though they did not pass the qualifying examination, but because they were exempted from passing such examination on account of attaining the age of 45 years. It will not give any legal right to the applicants to claim absorption, since they are wrongly exempted. Since the applicants are not eligible as per the recruitment rules for being absorbed, they cannot claim absorption.

24. On a conspectus of discussion in foregoing paras, I am, therefore, satisfied that the applicants had failed to prove that they are qualified for being absorbed as Civil Engineering Assistants as per the recruitment rules and, therefore, applicants' claim has no merits. I, therefore, proceed to pass the following order:-

**ORDER**

The O.As stand dismissed with no order as to costs.

Dt. 18.1.2018.

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

pdg