

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 1012 of 2022 (D.B.)

Nitin S/o Tanaji Barhate,
Aged 52 years, Occ. Service,
R/o 601, Vedant Peridot,
Plot No.2, Bajaj Nagar, Nagpur.

Applicant.

Versus

1) The State of Maharashtra,
through its Secretary (Roads /Building),
Public Works Department, Mantralaya, Mumbai-32.

Respondent.

Shri S.P. Palshikar, Advocate for the applicant.
Shri V.A. Kulkarni, learned P.O. for the respondent.

WITH

ORIGINAL APPLICATION No. 1013 of 2022 (D.B.)

Shyamsundar S/o Pralhadrao Tembhare,
Aged 50 years, Occ. Service,
R/o 55, Radheshyam Kolhe Layout,
Darwha Road, Yavatmal.

Applicant.

Versus

1) The State of Maharashtra,
through its Secretary,
Water Resources Department (Jalsampada),
Mantralaya, Mumbai-32.

Respondent.

Shri S.P. Palshikar, Advocate for the applicant.
Shri V.A. Kulkarni, learned P.O. for the respondent.

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

Date of Reserving for Judgment : 24th January, 2023.
Date of Pronouncement of Judgment : 31st January, 2023.

COMMON JUDGMENT

(Delivered on this 31st day of January,2023)

Per : Shri Justice M.G. Giratkar, Vice-Chairman.

Heard Shri S.P. Palshikar, learned counsel for the applicants and Shri V.A. Kulkarni, learned P.O. for the respondents.

2. Case of the applicant Shri Nitin T. Barhate in O.A. 1012/2022 in short is as under –

The applicant was appointed on the post of Assistant Engineer, Grade-II on 13/10/1995. He was posted at Yavatmal. Thereafter on 07/10/2021 he was promoted as a Sub Divisional Engineer (SDE). The service of the applicant was regularized from the date of his initial appointment as per the Rules framed by the respondents from time to time. As per the Service Rules framed by the respondents in the year 1997 and thereafter amended Rules of 2009, the applicant is entitled to get his seniority from the date of his initial appointment, i.e., from 13/10/1995. The respondents have published seniority list and the applicant is shown at Sr.No.1094 of seniority list, whereas, one Sandip Tukaram Patil who was appointed in the year 1996 was shown at Sr.No.656. Therefore, the applicant has approached to this Tribunal for following reliefs –

“(8) To call for the entire record regarding seniority list dated 06/09/2014 and after perusal of the same be pleased to –

(i) further be pleased to direct the respondent to correct the seniority list as per rules of 1997, rules of 2009 and also rules of 1982;

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

3. In O.A.No. 1013/2022, the applicant Shri Shyamsundar P. Tembhare was appointed on 02/06/1995 on the post of Assistant Engineer, Grade-II and he was posted at Yavatmal. He was promoted as Sub Divisional Engineer (SDE) on 03/05/2018. The Government of Maharashtra framed rules for regulating recruitment to the post of Assistant Engineer (Civil), Grade-II in the Maharashtra Services Engineering, Group-B under Public Works Department and Irrigation Department on 16/06/1997. The said rules were amended on 08/07/2009. As per the rules, the service of the applicant was regularized from the date of his initial appointment, i.e., from 02/06/1995. But the respondents have wrongly shown his seniority at Sr.No.1171 treating his seniority from 24/02/2002 (P-76). One Shilpa S. Dhavadgaonkar who was appointed in the year 2001 is shown senior to the applicant at Sr.No.967, therefore, the applicant approached to this Tribunal for the following reliefs –

“(8) To call for the entire record regarding seniority list dated 01/09/2017 and after perusal of the same be pleased to –

(i) further be pleased to direct the respondent to correct the seniority list as per rules of 1997, rules of 2009 and also rules of 1982;

(ii) further be pleased to direct the respondent to show the name of the applicant in the seniority list after Sr.No.966.”

4. The learned counsel for the applicants Shri S.P. Palshikar has filed pursis on 12/01/2023 stating that the similar matter is decided by this Tribunal in O.A.325/2015. This Tribunal has directed the respondents to correct the seniority list showing the applicants' seniority from the date of their initial appointments. There is no dispute that the order of this Tribunal in O.A.325/2015, decided on 11/08/2022, is complied with by the respondents by issuing Government Corrigendum dated 14/12/2022.

5. The learned P.O. has submitted that aggrieved persons challenged the Judgment of this Tribunal before the Hon'ble High Court, but no stay is granted.

6. The learned counsel for applicants Shri S.P. Palshikar has pointed out the decision of this Tribunal in O.A.325/2015 and decision in O.A.686/2018 with connected O.As.

7. Heard Shri S.P. Palshikar, learned counsel for the applicants and Shri V.A. Kulkarni, learned P.O. for the respondents. There is no dispute that the applicants were appointed on the post of Assistant Engineer, Grade-II on 13/10/1995 (Shri N.T. Barhate) and

on 02/06/1995 (Shri S.P.Tembhare). As per the rules framed by the respondents of the year 1997, their services were continued. Thereafter, rules of 1997 was amended in the year 2009. This Tribunal has recorded its findings in O.A.No.325 of 2015 as under –

“5. There is no dispute that the applicants were appointed in the year 1996. The applicant no.1 has filed affidavit on record. As per this affidavit dated 2/8/2022, all the applicants were appointed in the year 1995/ 1996. All applicants have passed the MPSC examination in first attempt held in the year 1998. The results were declared in the year 1999. The Government has issued the G.R. dated 01/03/2000 and regularised the services of the applicants alongwith others. This Tribunal has noted the said G.R. in the Judgment of this Tribunal in O.A.No. 686/2018, decided on 26/04/2022. The relevant para nos.11,12 and 13 are reproduced as below –

“11. The learned counsel for the applicants has pointed out various Govt. G.Rs. There is no dispute that all three applicants were appointed in the year 1996 on temporary basis on the post of Assistant Engineer (Grade II). Their appointments were regularised as per the Govt. G.R. dated 01/03/2000 on following conditions -

शासन निर्णय :-

शासन आता पाटबंधारे विभाग व सार्वजनिक बांधकाम विभागात मिळून सहायक अभियंता श्रेणी-२ संवर्गात (स्थापत्य/विद्युत/यांत्रिकी/कृषि अभियांत्रिकी) दि.२.४.८१ ते ३१.१२.९६ पर्यंत पाटबंधारे

विभागातील १०९७ व सार्वजनिक बांधकाम विभागातील १०५३ अशा एकुण २१५० पदांवरील तदर्थ नियुक्त्या घटनेच्या कलम ३२० (३) अन्वये महाराष्ट्र लोकसेवा आयोगाच्या कक्षेतून वगळून नियमित करण्यासाठी पुढील प्रमाणे मंजूरी देत आहे.

अ) दि.२.४.८१ ते दि.१६.४.८४ पर्यंत नियुक्त केलेल्या पदवीधर कनिष्ठ अभियंत्यांना त्यांच्या नियुक्तीच्या दिनांकापासून सहायक अभियंता श्रेणी-२ पदाचा दर्जा यापुर्वीच दिलेला आहे. आता अशा सहायक अभियंता श्रेणी-२ संवर्गातील एकुण ७५५ अभियंत्यांच्या नियुक्त्या नेमणुकीच्या दिनांकापासून नियमित करण्यात येत आहेत.

ब) दि.१७.४.१९८४ ते ३१.१२.१९९३ पर्यंत करण्यात आलेल्या एकुण ५९६ तदर्थ नेमणुकावरील अभियंत्यांना त्यांच्या नियुक्तीच्या दिनांकापासून सहायक अभियंता श्रेणी-२ संवर्गात नियमित करण्यात येत आहेत.

क) दि.१.१.१९९४ ते दि.३१.१२.१९९६ पर्यंतच्या एकुण ३९९ तदर्थ नेमणुका त्यांच्या नियुक्तीच्या दिनांकापासून सहायक अभियंता श्रेणी-२ संवर्गात नियमित करण्यात येत आहेत.

ड) दि.१.४.१९८१ ते दि.१६.६.१९९७ पर्यंत म्हणजेच सेवा प्रवेश नियम अंतिम होईपर्यंत सेवेत राहून पदवी धारण केलेल्या पदवीधारक कनिष्ठ अभियंता/शाखा अभियंता यांची ज्येष्ठता शासनाच्या दि.२९.११.८४ च्या शासन निर्णयातील ३/८ सेवा जोडून दिलेल्या मानीव दिनांकापासून निश्चित करून अशा एकुण ४०० अभियंत्यांच्या, सहायक अभियंता श्रेणी-२ संवर्गातील नेमणुका नियमित करण्यात येत आहेत.

२. संबंधित सहायक अभियंता श्रेणी-२ संवर्गातील अभियंत्यांना त्यांच्या नियमितीकरणाच्या दिनांकापासून ज्येष्ठता निश्चित करण्यात येऊन त्यानुसार सदर अभियंत्यांची ज्येष्ठतासूची यथावकाश प्रसिध्द करण्यात येईल. सदर आदेश सार्वजनिक बांधकाम विभागाच्या व सामान्य प्रशासन विभागाच्या सहमतीने निर्गमित करण्यात येत आहेत.

12. As per the Govt. Notification dated 16/06/1997, rules of “Assistant Engineers (Civil), Grade-II, in the Maharashtra Service of Engineers, Group-B (Recruitment) Rules,1997” were framed. The Rule-8 of the Rules,1997 reads as under –

“(8) Notwithstanding anything contained in rule 3, the temporary appointments made to the post till the 31st December, 1996, may be regularised in the following manner, namely:-

- (a) The persons who have completed minimum three years of continuous service as on the 31st December, 1996 and have satisfied the requirements of qualification and age limit mentioned in rule 3, at the time of their appointment, shall have to viva-voce or Limited Competitive examinations to be held by the Commission during 1997-1998.
- (b) Services of those persons who will qualify in such examination will be regularised.
- (c) The seniority of such qualified person shall be fixed as per the existing rules noticed vide Government Notification General Administration Department No.SRV 1076/XII, dated 21st June 1982 regarding fixation of seniority.
- (d) The services of persons who do not qualify in such examination shall be terminated by the Government.
- (e) The person who has been appointed to the post on or after 1st January 1994 but on or before 31st December 1996 and who possess the qualification mentioned in rule 3(ii) shall, in relaxation if necessary of the age-limit prescribed in rule 3(i), be required to get selected in the first attempt in the regular combined competitive examination to be held by the commission during 1997-1998. Service of such persons who have not been selected in the above competitive examination shall be terminated by the Government, and the seniority of selected persons shall be fixed in accordance with the rules mentioned in Government Notification dated the 21st June 1982 mentioned in rule 8 (c).”

13. The rules of 16/06/1997 were amended on 8/7/2009. The rule 8 was amended as under -

“8. Notwithstanding anything contained in rule 3, the appointments made to the posts till the 16th June 1997, shall be regularised in the following manner, namely:-

(a) The persons appointed on regular basis during the period from the 2nd April 1981 to the 16th April 1984 to the post of Graduate Junior Engineers (Class-III) either through the State Selection Board or from the candidates who have given bonds for serving in Government service as per the then prescribed procedure for appointment, shall have to pass viva-voce test that shall be the qualifying examination, to be held by the Commission during the period 2009-2010 or immediately thereafter, to enable them to be absorbed in the cadre of Assistant Engineer, Grade II (Junior Gazetted Class-II), created for Graduate Junior Engineers vide Government Resolution, Irrigation Department, No.CDS 1582 / 158 (215) / EST-(10), dated the 16th April 1984.

(b) The Diploma holder Junior Engineers regularly appointed in Class-III post and who have obtained A.M.I.E. (Equivalent to B.E. Degree) or B.E. Degree while in service have been given benefit of 3/8th of service rendered as Junior Engineer, during the period from the 1st April 1981 to 16th June 1997, in the light of the provisions of the Government Resolution, Irrigation Department, No.S.L.S.2681/1273/(500)/EST (8), dated the 29th November 1984. Such persons shall have to pass viva-voce test that shall be the qualifying examination, to be held by the Commission during 2009-2010 or immediately thereafter, to enable them to be absorbed in the cadre of Assistant Engineer, Grade II, vide Government Resolution, dated the 16th April 1984.

(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 appointment in the cadre of Assistant Engineer, Grade-II.

- (d) The persons appointed during this period from 17th April 1984 to 31st December 1996, and not qualified in the above said viva-voce test or Combined Competitive Examination as the case may be held by the Commission shall have to pass in the vivo-voce test to be held by the Commission during the period 2009-2010 or immediately thereafter, to enable them to get regularised in the cadre of Asstt. Engineer, Grade-II
- (e) Persons who do not pass in such viva-voce test shall be given second opportunity to appear for the viva-voce test to be held by the Maharashtra Public Service Commission, to enable them to get their services regularised in the cadre of Assistant Engineer, Grade-II.
- (f) The persons who do not pass in the second attempt shall be given one more opportunity by way of last chance to appear for the viva-voce test to be held by the Maharashtra Public Service Commission, to enable them to get their services regularised in the cadre of Assistant Engineer, Grade-II. -----”

6. The applicants have passed the MPSC examination in first attempt. The Recruitment Rules framed by the Government do not show that seniority is to be fixed as per the merit list. The rules only show that Assistant Engineers, Grade-II those who are appointed before 1996, their appointments shall be regularised who have passed the MPSC examination in the first attempt. All the applicants have passed the departmental examination in the first attempt. Therefore, they are entitled to maintain their seniority on the date on which they were appointed. Therefore, the following order –

- (i) The O.A. is allowed as prayed.
- (ii) The respondent no.1 is directed to show the name of applicants in the seniority list after Serial No.655.
- (iii) The C.A. also stands disposed off accordingly.
- (iv) No order as to costs.”

8. One of the direct recruited candidate namely Sunita Daulatrao Patil & ors., had filed Writ Petition No.7415/2003 before the Hon'ble Bombay High Court challenging the amended rules of 2009. The said Writ Petition was dismissed. The SLP No. 10083/2010 was filed before the Hon'ble Supreme Court. The said SLP was dismissed by the Hon'ble Supreme Court.

9. This Tribunal has already recorded its findings holding that the services of the Assistant Engineer, Grade-II were regularized as per the rules framed by the Government of Maharashtra, dated 16/06/1997 and amended rules dated 08/07/2009. Therefore, their seniority should have been shown from the date of their initial appointments. Accordingly the respondents were directed to correct the seniority list. The respondents have corrected the seniority list as per the Government Corrigendum dated 14/12/2022.

10. The applicant Shri Nitin T. Barhate was appointed on 13/10/1995. His service was regularized as per the rules of 1997 and 2009. Therefore, he should have been shown senior from the date of his initial appointment, i.e., from 13/10/1995. But the seniority list published by the respondents shows that his seniority is shown from the year 2010. One Rajesh Vitthalrao Pathrikar (P-74) who was appointed in the year 1996 is shown at Sr.No.657. Therefore, seniority list is liable to be corrected.

11. In the case of Shri Tembhare, his service was regularized from 02/06/1995. Therefore, he should have been shown from the date of his initial appointment, but his seniority is shown from 24/02/2002. One of the direct recruited candidate, Shilpa S. Dhavadgaonkar who was appointed in the year 2001 was shown senior at Sr.No.967. Hence, seniority list is liable to be corrected. With these findings, the following order is passed –

ORDER

- (1) The O.A. No.1012/2022 is allowed.
 - (i) The respondents are directed to correct the seniority list as per rules of 1982,1997 and 2009.
 - (ii) The respondents are directed to show the name of applicant in the seniority list after sr.no.655 and grant all consequential benefits.
- (2) The O.A.No.1013/2022 is allowed.
 - (i) The respondents are directed to correct the seniority list as per rules of 1982,1997 and 2009.
 - (ii) The respondents are directed to show the name of applicant in the seniority list after sr.no.966 and grant all consequential benefits.
- (3) No order as to costs.

(Justice M.G. Giratkar)
Vice-Chairman

(Shree Bhagwan)
Vice- Chairman

Dated :- 31/01/2023.

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

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 31/01/2023.