

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 576 OF 2013

DISTRICT: PARBHANI

1. **Shri Rameshwar S/o Govindrao Ubale,**
Age: 46 years, Occu: C.E.A.,
Jayakwadi Irrigation Div. 2, Parbhai.
Adds for Service of Notice : 18-A, Bhagya Nagar,
Wasmat Road, Parbhani.
2. **Shri Nivrutti S/o Govindrao Chavan,**
Age: 45years, Occu: C.E.A.,
Jayakwadi Irrigation Div. 2, Parbhai.
Adds for Service of Notice : Swatantrya Sainik
Colony, Parbhani.
3. **Shri Tukaram S/o Laxmanrao Gavane,**
Age: 50 years, Occu: C.E.A.,
Jayakwadi Irrigation Div. 2, Parbhai.
Adds for Service of Notice : Satkar Colony,
Parbhani.
4. **Shri Manohar S/o Mahadu Bharne,**
Age: 56 years, Occu: C.E.A.,
Jayakwadi Irrigation Div. 2, Parbhai.
Adds for Service of Notice : Sant Sena Nagar,
Parbhani.

.. **APPLICANTS**

V E R S U S

- 1) **The State of Maharashtra,**
Through Secretary,
Irrigation Department,
Mantralaya, Mumbai.
- 2) **Superintending Engineer and Administrator,**
Labh Kshetra Vikas
Pradhikar, Garkheda Parisar,
Aurangabad.

.. **RESPONDENTS**

APPEARANCE : Shri S.S. Dambe, learned Advocate for
the Applicants.

: Shri M.P. Gude, learned Presenting Officer
for the Respondents.

**CORAM : HON'BLE SHRI J.D. KULKARNI,
VICE CHAIRMAN (J).**

O R D E R

(Delivered on this 24th day of August, 2017.)

1. Heard Shri S.S. Dambe, learned Advocate for the applicants and Shri M.P. Gude, learned Presenting Officer for the respondents.

2. In this Original Application, the applicants Shri Rameshwar Govindrao Ubale and others are claiming that the impugned communication dated 7.1.2013 be quashed and set aside and the Government Resolution dated 12.10.2012 also may be quashed and set aside.

3. The applicants are appointed on the post of Technical Assistant at various places under Land Development Division No. 4, Parbhani vide orders dated 19.03.1985 and 4.7.1985 in the pay scale of Rs. 260 to 495. The applicant Nos. 1 to 4 have passed the eligibility examination and have also obtained necessary National Trade Certificate on 1.2.1983, 30.04.1984 and 10.01.1985. Time bound promotion benefit was also granted to them on 15.12.2006 and 14.09.2007.

4. By virtue of office order No. 10 dated 7.1.2013, the applicant received written communication regarding time bound promotion and pay fixation of employees of Structural Civil Engineer Assistant Class. Vide this letter, it was clarified that all the Government Resolutions and provisions mentioned in letter from Sr. No. 1 to 7 under reference were cancelled and re-called vide Government Resolution dated 12.10.2012.

5. The applicant Nos. 1 and 2 have received time bound promotional pay scale as per order dated 15.12.2006 in accordance with the Government Resolution dated 19.10.2001. However, in view of the G.R. dated 12.10.2012, the time bound promotions have been called and the respondent No. 2 communicated vide letter dated 10.05.2012 to the applicants that the excess amount paid to them will be recovered.

6. According to the applicants, the act of the Government in cancelling various previous G.Rs. by way of G.R. dated 12.10.2012 is contrary to the previous decision taken by the Government from time to time and it is against the welfare and wellbeing of the Government employees. It is further stated that the various G.Rs. at Sr. No. 1 to 7 as mentioned in the G.R. dated 12.10.2012, have been cancelled without any clarification and said cancellation is contrary to the previous G.Rs. Before cancellation of earlier G.Rs. vide

impugned G.R. dated 12.10.2012 number of employees were promoted during the period from 2001 to 2012 and said cancellation of various G.Rs. retrospectively is unconstitutional, unfair and unjust. The act on the part of the Government is arbitrary.

7. It is stated that the number of employees have been granted benefits and said benefits cannot be withdrawn all of a sudden. The provisions of recovery of said amount will now put the retired pensioners to hardship.

8. The respondent No. 2 has filed affidavit in reply and justified the withdrawal of earlier G.Rs. by issuance of G.R. dated 12.10.2012. It is stated that the applicant Nos. 1 to 4 came to be absorbed in the cadre of Civil Engineering Assistant on 1.1.1989 and the applicant No. 1 passed examination of Junior Engineer on 30.12.1999. The applicant Nos. 2 and 3 have passed the said examination on 15.11.2006, whereas, the Applicant No. 4 has passed the said examination on 30.12.1999 and they are entitled to various benefits only from the date of passing of eligibility examination. The respondent No. 2 justified the action taken by the Government.

9. The respondent No. 1 also filed affidavit in reply. It is stated that as per the Government Notification dated 1.1.1998, the Junior Engineer (Civil) Group-B non-gazetted in

the Public Works Department and Irrigation Department (Recruitment) Rules, 1998, Rule 3(a) (i) of the said Rule the Civil Engineering Assistant, who has passed the qualifying examination for the post of Junior Engineer conducted by the MERI, Nashik and who has rendered not less than three years regular service in that post is eligible for being promoted to the post of Junior Engineer i.e. promotional post of Civil Engineering Assistant. Thus, for promoting a C.E.A. to the post of Junior Engineer, it is necessary for the Civil Engineer Assistant to pass promotional post. It is a basic and essential condition for promotion. So as to get promotional scale for the post of Junior Engineer under time bound promotion scheme, it is necessary to pass professional examination of J.E. and the said fact has been clarified vide G.R. dated 6.11.2000 and the Government letter dated 23.2.2005. It is clarified that there is no exemption from passing the professional examination of J.E. for reason of crossing age of 45 years.

10. Considering the various rules and regulations, the Government has issued G.R. dated 12.10.2012 and it has been made clear that the C.E.A. who has passed professional examination for the post of J.E. is entitled to get benefit of time bound promotion from the date of passing of said examination. The conscious decision was taken not to recover the amount from the employees who have already been benefited as per

letter dated 19.10.2001. Even the amount has been refunded to the employees from whom, which was recovered.

11. Learned Advocate for the applicant has submitted that the time bound promotion granted to the various employees in the year 2006-07, but the same was withdrawn vide impugned communication dated 7.1.2013. All these orders are placed on record collectively as office order No. 10 and the same is at paper book page no. 29 to 35 (both inclusive). Purport of the said communication is as under:-

“कार्यालयीन आदेश क्रमांक (१०)

शासन पत्र संदर्भ-१ च्या अनुषंगाने ज्या स्थापत्य अभियंत्रिकी सहाय्यकांनी कनिष्ठ अभियंताची व्यावसायिक परिक्षा त्यांना कनिष्ठ कर्मचा-यापेक्षा उशिराने परंतु विहित संधीत उत्तीर्ण केली असल्याने त्यांची परिमंडळीय ज्येष्ठता यादीत ज्येष्ठता डावलण्यात आली नाही, अशा कर्मचा-यास तो व्यावसायिक परीक्षा उत्तीर्ण झाल्यानंतरच कालबद्ध पदोन्नतीचा फायदा मिळेल, परंतु त्यांच्या कनिष्ठाला ज्यावेळी कालबद्ध पदोन्नतीचा फायदा मिळाला त्या दिनांकापासून वेतननिश्चितीचा लाभ अनुज्ञेय करण्यात आलेले या प्राधिकरणाचे आदेश संदर्भ क्र. १ ते ७ हे शासन परिपत्रक (संदर्भ-८) मधील निर्देशानुसार रद्द करण्यात येते आहेत व ते कनिष्ठ अभियंताची व्यावसायिक परिक्षा उत्तीर्ण झाल्याच्या दिनांकापासून कालबद्ध पदोन्नती/आश्वासित प्रगती योजनेचे लाभ अनुज्ञेय होतील.

तथापी त्यांना यापूर्वी दि. १९.१०.२००१ मधील तरतूदी अनुषंगाने अनुज्ञेय करण्यात आलेल्या कालबद्ध पदोन्नती/आश्वासित प्रगती योजनेच्या लाभाच्या अनुषंगाने झालेल्या अतिप्रदानाची वसुली (परिपत्रक (संदर्भ-८) निर्गमित झालेल्या दिनांकापर्यंत) करण्यात येऊ नये.

स्वाक्षरीत/-
(ए.बा. जोगदंड)
अधीक्षक अभियंता व प्रशासक

जा.क्र.आस्था-२/११६

दिनांक ०७/०१/२०१३ ”

12. Plain reading of the aforesaid order clearly shows that the Civil Engineer Assistants were granted time bound promotional scale from the date of passing of qualifying examination for the post of J.E. It is also made clear that those who have already been granted said promotion in view of the earlier G.R. dated 19.10.2001 will not have to refund the amount, which was already received by them. Thus care has been taken to see that the employees, who have been benefited of the time bound pay scale in view of the G.R. dated 19.10.2001 have been protected. Thus, no hardship will be caused to any of the employees, who have been granted time bound promotional scale since 2000 till the date of clearance of qualifying examination. So no financial loss has been caused to them.

13. Withdrawal of the benefits have been ordered in view of the G.R. dated 12.10.2012. Introduction/preface of clause of the said G.R. is as under:-

“ प्रस्तावना :

शासनाच्या संदर्भिय पत्रान्वये स्थापत्य अभियंत्रिकी सहायक संवर्गातील ज्या कर्मचा-यांनी कनिष्ठ अभियंता पदाची व्यावसायिक (अर्हता) परीक्षा कनिष्ठ कर्मचा-यापेक्षा उशिराने परंतु विहित संधीत उत्तीर्ण केली असल्याने त्याची परिमंडळीय ज्येष्ठतायादीत ज्येष्ठता डावलण्यात आलेली नाही अशा कर्मचा-यास तो व्यावसायिक परीक्षा उत्तीर्ण झाल्यानंतर कालबद्ध पदोन्नतीचा फायदा मिळेल, परंतु त्याच्या कनिष्ठाला ज्यावेळी कालबद्ध पदोन्नतीचा फायदा मिळाला त्या दिनांकापासून वेतननिश्चितीचा लाभ अनुज्ञेय ठरेल तसेच, ज्येष्ठता गमावलेल्या कर्मचा-यांना मात्र सामान्य प्रशासन विभागाच्या दि. २०.

३. १९९७ च्या शासन निर्णयातील स्पष्टीकरणानुसार सुधारीत ज्येष्ठता विचारात घेवून असा लाभ देय होईल असे निर्देश देण्यात आले आहेत.

२. जलसंपदा विभागातील स्थापत्य अभियांत्रिकी सहायक संवर्गातील नियमित पदोन्नती मिळण्याकरीता कनिष्ठ अभियंता पदाची व्यावसायिक (अर्हता) परीक्षा उत्तीर्ण होणे आवश्यक आहे. सदर परीक्षा ही अर्हताकारी परीक्षा असल्याने ती उत्तीर्ण होण्यापासून कोणत्याही कारणास्तव सूट देता येत नाही. स्थापत्य अभियांत्रिकी सहायक पदावरील कर्मचारी ज्या वेळी कनिष्ठ अभियंता पदाची व्यावसायिक परीक्षा उत्तीर्ण करेल त्यावेळी तो कनिष्ठ अभियंता पदावर पदोन्नतीकरीता पात्र ठरतो. स्थापत्य अभियांत्रिकी सहायकाने ही परीक्षा किती वर्षात व किती संधीत उत्तीर्ण केली पाहिजे याबाबत कोणतीही तरतूद नाही. यास्तव, एखादा स्थापत्य अभियांत्रिकी सहायक कनिष्ठ अभियंता पदाची व्यावसायिक परीक्षा उशीराने तसेच ब-याच वर्षांनी उत्तीर्ण झाला तरी सदर स्थापत्य अभियांत्रिकी सहायकाची स्थापत्य अभियांत्रिकी सहायक संवर्गातील सेवान्येष्ठता अबाधित राहते. शासनाच्या प्रचलित धोरणानुसार कालबद्ध पदोन्नती/आश्वासित प्रगती योजनेचे लाभ अनुज्ञेय करताना संबंधित कर्मचा-याने संबंधित पदावरील १२ वर्षांच्या नियमित सेवेव्यतिरिक्त वरिष्ठ पदावरील पदोन्नतीसाठी आवश्यक अर्हता, पात्रता धारण करणे आवश्यक आहे.

१. शासनाच्या संदर्भिय पत्रातील तरतूदीनुसार एखादा वरिष्ठ स्थापत्य अभियांत्रिकी सहायक उशिरा व्यावसायिक परीक्षा उत्तीर्ण झाला असला तरी त्याला त्यापूर्वीपासून सदर योजनेतर्गत वरिष्ठ वेतन श्रेणीमध्ये वेतननिश्चिती करण्यात येते. ही बाब वरील परिच्छेदात नमूद केलेल्या तरतूदींशी विसंगत आहे. सबब, जलसंपदा विभागातील स्थापत्य अभियांत्रिकी सहायक संवर्गातील कर्मचा-यांना कालबद्ध/ आश्वासित प्रगती योजनेचे लाभ अनुज्ञेय करण्याच्या संदर्भात खालील प्रमाणे नव्याने निर्देश देण्यात येत आहे.”

14. Perusal of the said preface clearly shows that in spite of the fact that there was a specific provision under recruitment Rules that time bound promotion shall not be granted unless and until the Civil Engineer Assistant passing the qualifying examination for the post of J.E., still said time bound promotions were granted. Passing of qualifying examination is a Rule under recruitment Rules and therefore, if the G.R. has been issued against the Rules, which are

framed under Article 309 of the Constitution of India, the said G.Rs./Notifications have no statutory value as the same are against the statutory Recruitment Rules. Therefore, it seems that the Government has rectified its mistake by withdrawing of earlier G.Rs. which were against the recruitment Rules and therefore, nothing illegal has been done by the Government in issuing G.R. dated 12.10.2012. Earlier G.Rs. were against the provisions of Recruitment Rules and therefore, have been withdrawn rightly. Even though, the same are withdrawn with retrospective effect, no prejudice has been caused to the applicants, since the respondents are not going to recover the amount already paid to the applicants. The respondents have made a statement that, in some cases the amount was recovered, but the same has been refunded to the respective employees. In such circumstances, I do not find any reason for the applicants to challenge the G.R. dated 12.10.2012. All the impugned orders vide office order No. 10 clearly shows that it was specifically directed that no amount paid to the employees in view of the G.R. dated 19.10.2001 in respect of time bound promotional scale shall be recovered.

10. On a conspectus of discussions in foregoing paragraphs, I am therefore, satisfied that the issuance of G.R. dated 12.10.2012 cannot be said to be arbitrary or illegal and hence, I pass following order:-

ORDER

The Original Application stands dismissed with no order as to costs.

(J.D. KULKARNI)
VICE CHAIRMAN (J)

Kpb/S.B. O.A. No. 576 of 2013 JDK 2017