

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD

**ORIGINAL APPLICATION NO.275 OF 2012**

**DISTRICT : - NANDED.**

1. PunjabraoDattraoBhosle,  
Age :51 years, Occu: Service,  
R/o Jungamwadi, Nanded,  
Tq. & Dist. Nanded.
2. KherbajiDhondibaSurywanshi,  
Age : 51 years, Occu. Service,  
R/o Jungamwadi, Nanded,  
Tq. & Dist. Nanded.
3. Renukadaskeshavrao Joshi,  
Age : 52 years, Occu. Service,  
R/o PurnaPatbandhareVibhag,  
Vasmat, Branch No. 2, Malegaon  
Tq. Vasmat, Dist. Hingoli.
4. DastagirKhaMasumKhaPathan,  
Age : 45 years, Occu. Service,  
R/o Jungamwadi, Nanded,  
Tq. & Dist. Nanded.
5. Suryakant Narayan Thorkar,  
Age : 49 years, Occu. Service,  
R/o Sidheshwarnagar, Omarkhed  
Tq. Omarkhed, Dist. Yavatmal.
6. ShivajiKeshavShirphule,  
Age : 48 years, Occu. Service,  
R/o Mahatma Phule Road,  
Omerkhed, Tq. Omerkhed,  
Dist. Yavatmal.

7. Shankar NagoraoMedewar,  
Age : 33 years, Occu. Service,  
R/o Kalamnuri, Tq. Kalamnuri,  
Dist. Hingoli.

8. Anil MadhukarraoKulkarni,  
Age : 54 years, Occu. Service,  
R/o Plot No. 45, Ashoknagar,  
Nanded, Dist. Nanded.

.. APPLICANTS.

### **V E R S U S**

1. The State of Maharashtra  
Through Secretary,  
Irrigation Department,  
Mantralaya, Mumbai-32.
2. The Vigilance Cell Committee,  
Irrigation Department, Aurangabad Division,  
Through its Superintendent Engineer.
3. The Superintendent Engineer,  
Nanded Irrigation Circle,  
SinchanBhavan, New Workshop,  
Nanded.
4. The Superintending Engineer,  
Urdh Pain Ganga Project,  
Division 1, New Workshop,  
Nanded.
5. The Executive Engineer,  
Purna Irrigation Department,  
Basmat Nagar, Tq. Basmat,  
Dist. Hingoli.

6. The Executive Engineer,  
Urdh Pain Ganga Project,  
Division 1, Chaitanya Nagar,  
Nanded.
7. The Executive Engineer,  
Urdh Pain Ganga, Sub Division,  
31, Dongarkada, Tq. Akhadabalapur,  
Dist. Hingoli. .. RESPONDENTS.

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APPEARANCE : ShriVikram S. Kadam – learned  
Advocate for the Applicants.

: Mrs. Deepali S. Deshpande –  
learned Presenting Officer for the  
respondents.

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**CORAM : HON’BLE SHRI RAJIV AGARWAR,  
VICE CHAIRMAN (A).**

**AND**

**: HON’BLE SHRI J.D. KULKARNI,  
MEMBER (J)**

**PER : Hon’bleShri J.D. Kulkarni,  
Member (J)]**

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### **J U D G M E N T**

**[Delivered on this 13<sup>th</sup>day of December, 2016]**

1. The applicants were initially appointed as Majdoors,  
Security Guards, Helpers and Operators at various places

and were brought on Converted Regular Temporary Establishment i.e. C.R.T.E. and thereafter were upgraded as Wireless Operators and Clerks respectively.

2. Respondent No. 1 issued a Government Resolution on 20.12.2001, whereby it is stated that the employees possessing requisite qualification of Surveyor and Construction Supervisor were to be absorbed as Civil Engineering Assistants. On 26.2.2002, the respondent No. 1 issued another Government Resolution and as per the Clause No. 3 (A) (III), persons who are appointed prior to 1<sup>st</sup> January, 1989 and if they completed course of Surveyor from Government Institute were to be absorbed as Civil Engineering Assistant. As per Clause 4 of the said Government Resolution it was stated that after absorbing employees, who possess requisite qualification to be appointed as Civil Engineering Assistant, the remaining posts of Civil Engineering Assistant will be filled up by 100% nomination.

3. According to the applicants, after issuance of the Government Resolution dated 3.9.1999 and 26.2.2002,

the applicants obtained necessary permission from the Department and completed course of Surveyor and Construction Supervisor from the Government Institute. Respondent Nos. 5 to 7 have forwarded proposals in respect of applicants for being absorbed on the post of Civil Engineering Assistant as the applicants were possessing requisite qualification.

4. In spite of the fact that the proposal to absorb the applicants was pending, the respondent Nos. 1 & 2 have issued an advertisement on 3.1.2012 calling applications from the eligible candidates for filling up 57 posts of Civil Engineering Assistant. It is stated that such advertisement is issued with mala fide intention to deny the applicants an opportunity of being absorbed on the post of Civil Engineering Assistant. The applicants are, therefore, constrained to file this Original Application.

5. The applicants have claimed that the respondents Nos. 1 & 2 be directed to take decision on the proposals for absorbing the applicants on the post of Civil Engineering Assistant and further to declare that the

advertisement dated 3.1.2012 published in Daily Lokmat is arbitrary, illegal and contrary to the Government Resolution dated 26<sup>th</sup> February, 2002 issued by respondent No. 2 and, as such, the same be quashed and set aside.

6. Respondent No. 2 resisted the claim. It is submitted that the applicants are not entitled to get absorbed in the cadre of Civil Engineering Assistant as they acquired qualification after 1.1.1989 i.e. in between 2007 and 2008 and, as such, they were not possessing the qualification mentioned in Schedule 'A'. It is stated that the advertisement dated 3.1.2012 in which 76 posts of Civil Engineering Assistant wereshown to be filled by nomination only, because the post of Civil Engineering Assistant to be absorbed as per the ratio has already been fulfilled before the advertisement was published and recruitment to the post of Civil Engineering Assistant is being done as per the Government Resolution dated 26.2.2002 issued by Maharashtra Water Resources

Department, regarding Recruitment Rules for the post of Civil Engineering Assistant.

7. We have heard learned Advocate ShriVikram S. Kadam and learned Presenting Officer Mrs. Deepali S. Deshpande for the respondents. We have also perused the application, affidavit, affidavit in reply and various documents placed on record by the learned Advocates for the respective parties.

8. It seems that the applicants are relying upon the Government Resolutions dated 20.12.2001 and 26.2.2002 and as per the Government Resolution dated 20.12.2001 (**Exhibit 'A', page-14**), the following decision was taken by the Government of Maharashtra.

**“शासननिर्णय:-**

*वरीलपाश्वर्भूमीवर शासनअसेआदेशदेतआहे की, स्थापत्य अभियांत्रिकी सहाय्यक संवर्गनिर्मितीत शासननिर्णय पाटबंधारेविभागक्रमांकइएसटी १०८३/(४८०)आ(तांत्रिक), दिनांक ३१.१.१९८९ मधीलपरिशिष्ट अ (आ)मध्ये नमूदकेलेले पदधारक व संदर्भाधिनदिनांक २८.१०.१९९४ च्या शासननिर्णयानुसारत्यामध्ये समाविष्टकेलेलेकारकून या संवर्गातील पदधारकांप्रमाणेचसंदर्भक्रमांक*

५ येथे नमूद केलेल्या दिनांक ३.९.१९९९ च्या शासननिर्णयातील परिशिष्ट २ (आ) मध्ये अनुक्रमांक १४ येथे अनुरेखक या पदाचा समावेश करण्यात यावा.

**महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने.”**

9. The Government of Maharashtra then issued another Government Resolution dated 26.2.2002, whereby it was decided to absorb the employees in the post of Civil Engineering Assistant provided they possess certain qualifications. As per clause 3 (A) (ii) the persons to be absorbed was to clear the competent test within a period of one year and the said clause 3 reads as under: -

“३. पाटबंधारे विभागातील स्थापत्य अभियांत्रिकी सहाय्यक गट “क” या पदावरील नेमणुक पुढील प्रमाणे कोणत्याही एकामार्गाने करण्यात येईल :-

अ) पुढील व्यक्तिसमूहाने-

(एक) अनुसूचि “अ” मध्ये नमूद केलेल्या संवर्गातील व दिनांक १ जानेवारी १९८९ रोजी अनुसूचि “ब” मध्ये नमूद केलेली कोणतीही एक अर्हता धारण केलेली योग्य व्यक्ती किंवा

(दोन) अनुसूचि “अ” मध्ये नमूद केलेल्या संवर्गातील ज्या व्यक्ती शासनाचे महाराष्ट्र अभियांत्रिकी अधिकारी महाविद्यालय नाशिक यांचे मार्फत घेण्यात येणारी स्थापत्य अभियांत्रिकी

सहाय्यकांची अर्हता परिक्षा उत्तीर्ण झालेल्या आहेत.

त्या व्यक्तिसमूहामध्ये ज्येष्ठता अधिन पात्रता या निकषावर पात्र ठरविलेल्या व्यक्ती किंवा

(तिन) ज्या व्यक्ती दिनांक ०१ जानेवारी १९८९ रोजी शासनसेवेत, पाठबंधारे विभागात आहेत व त्यांनी शासनाच्या तंत्र शिक्षण विभागाच्या शासकीय तांत्रिक संस्थेमध्ये घेण्यात आलेली स्थापत्य अभियांत्रिकी सहाय्यकाच्या एक वर्ष मुदतीचा पाठ्यक्रम परीक्षा उत्तीर्ण केली आहे, अशा व्यक्तिसमूहाच्या पाठबंधारे विभागातील पद व आस्थापनेचे स्वरूप विचारात न घेता स्थापत्य अभियांत्रिकी सहाय्यक या पदावर काम करण्यास इच्छुक असतील अशा व्यक्ती, नमुदपत्यामधून नामनिर्देशाने-

(एक) अगोदरच शासनसेवेत असलेल्या उमेदवारां खेरीज करून ज्याचे वय ३० वर्षांपेक्षा जास्त नाही.

(दोन) ज्या व्यक्तिसमूहात शालांत प्रमाणपत्र परीक्षा उत्तीर्ण केली आहे आणि जी व्यक्ती शासनाच्या तंत्र शिक्षण विभागाच्या शासकीय तांत्रिक संस्थेकडून घेण्यात येणारी स्थापत्य अभियांत्रिकी सहाय्यकाची एक वर्ष मुदतीची पाठ्यक्रम परीक्षा उत्तीर्ण ही अर्हता धारण केलेली आहे.

परंतु ज्यांनी १९८०-८१ व १९८६-८७ या दरम्यान तंत्र शिक्षण विभागाच्या शासकीय तांत्रिक संस्थेकडून घेण्यात येणारी स्थापत्य अभियांत्रिकी सहाय्यकाची

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वर्ष मुदतीची पाठ्यक्रम परीक्षा उत्तीर्ण केलेली आहे अशा उमेदवारांच्या बाबतीत शासकीय तंत्र शिक्षण विभागाकडील त्यांच्या प्रमाणपत्राच्या पडताळणीच्या अधीन राहून वयोमर्यादा ४० वर्षे इतकी शिथिल करता येईल.”

10. Clause 4 of the Government Resolution dated 26.2.2002 shows that the posts of Civil Engineering Assistant were to be filled in in the ratio of 50:50 from the existing clerks/eligible employees and by nomination and after completion of such process subsequent recruitment to the post of Civil Engineering Assistant was to be done by the nomination only.

11. The applicants themselves have placed on record the chart, Exhibit 'C' page-21 of the paper book, showing the dates on which they acquired the qualification. It seems that the applicants have acquired requisite qualification in the year 2007.

12. According to the respondent No. 2, the Government Resolutions dated 31.1.1989, 3.9.1999 and 28.10.1994 regarding recruitment rules to the post of Civil Engineering Assistant was not applicable and now the Civil Engineering Assistants are being recruited from nomination category only, as per the Notification dated 26.2.2002 issued by Maharashtra Water Resources Department. In paragraph No. 4 of the affidavit in reply, it

is stated that all the applicants have obtained qualification for being absorbed in the post of Civil Engineering Assistant after 1.1.1989 i.e. in between 2007 and 2008 and, therefore, on the date of issuance of the Government Resolutions dated 20.12.2001 and 26.2.2002, the applicants were not qualified to be absorbed in the post of Civil Engineering Assistant. The table filed along with reply affidavit, which is at page 54 gives in details as to how the applicants were not qualified.

13. It seems that after absorbing all the qualified employees in the post of Civil Engineering Assistant, the respondent No. 1 has issued the impugned advertisement, whereby 100% posts of the Civil Engineering Assistant were to be filled in by the nomination. This seems to be in view of the decision taken by the Government as per Government Resolutions dated 20.12.2001 and 26.2.2002. There is nothing on record to show that the applicants were qualified to be absorbed on the date of issuance of the Government Resolution dated 20.12.2001 or 26.02.2002 or that they have acquired the qualification

within the extended period, and therefore, the applicants are not eligible to be absorbed.

14. The learned Advocate for the applicant submits that their cases have been recommended for absorption. The learned Advocate for the applicant invited our attention to such proposals, which are at page Nos. 31 to 44 (both inclusive). Careful perusal of the alleged proposal shows that the said documents are not proposals, but information supplied to the various authorities. Even otherwise, mere proposals cannot give right to the applicants to be absorbed in the post of Civil Engineering Assistant. The applicants must prove that they were qualified to be absorbed. In our opinion, the applicants have miserably failed to prove that they were qualified to be absorbed, as per the Government Resolution dated 26.2.2002.

15. In view of the discussion in foregoing paragraphs, we do not find any merits in the application, and hence, the following order: -

**ORDER**

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

**MEMBER (J)****VICE CHAIRMAN (A)**

O.A.NO.275-2012(hdd)-2016(DB)