IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1307 OF 2014

Smt. Kavita W/o Dayanand Nirmale
Age- 37 Years, Occu.: Service,
R/o. Shelke Plot, Near Narsinha Temple,
Samatanagar, Osmanabad,
Tq. & Dist. Osmanabad. ... PETITIONER.

VERSUS

1. The State of Maharashtra
   Through its Secretary,
   Rural Development & Water Conservation
   Department, Mantralaya, Mumbai – 32.

2. The Divisional Commissioner
   Aurangabad Division, Aurangabad.

3. The Chief Executive Officer,
   Zilla Parishad, Osmanabad.

4. The Chief Accountants & Finance
   Officer, Zilla Parishad, Osmanabad.

5. Ravindra S/o Jagannath Lodh,
   Age : 46 Years, Occ. Asst. Account Officer,
   R/o. Panchayat Samiti Kallamb,
   Tq. Kallamb, Dist. Osmanabad.

6. Ravikant S/o Jalbaji Navghade,
   Age: 47 Years, Occ. Jr. Accounts Officer,
   R/o. Panchayat Samiti Bhoom,
   Tq. Bhoom, Dist. Osmanabad.

7. Makrand S/o. Murlidhar Kulkarni,
Age: 41 Years, Occ. Jr. Accounts Officer,
(Finance Department)
R/o. Zilla Parishad, Osmanabad,
Tq. & Dist. Osmanabad. ... RESPONDENTS.

Mr. H.I. Pathan, Advocate for Petitioner;
Mr. V.H. Dighe, A.G.P. For State
Mr. Sushant B. Choudhary, Advocate for Respondent No. 3

CORAM : S.S. Shinde and P.R. Bora, JJ.

RESERVED ON : 31st March, 2015
PRONOUNCED ON : 08th April, 2015

JUDGMENT: (Per : P.R. Bora, J.)

1) Heard. Rule. Rule made returnable forthwith, with the consent of the parties.

2) Order dated 05.07.2013 passed by the Divisional Commissioner, Aurangabad (Respondent No.2) is questioned by the Petitioner in the present Petition.

3) The aforesaid order has been passed in an appeal preferred by the Petitioner against the order passed by the Chief Executive Officer, Zilla Parishad, Osmanabad (Respondent No.3) on 10.09.2012, whereby the Petitioner was reverted from the post of Deputy Accountant (Junior Accounts Officer) to the Post of

Senior Assistant (Accounts). The order dated 10.09.2012 was passed by the Chief Executive Officer, (Respondent No.3) in pursuance of the order passed by the Respondent No.2, thereby canceling the order of promotion issued in favour of the Petitioner and reverting the Petitioner back to the post of Senior Assistant (Accounts).

4) The Petitioner was appointed to the post of Senior Assistant (Accounts) in Accounts Department of Zilla Parishad, Osamanabad, vide order dated 20.02.2004. As per Maharashtra Zilla Parishad District Service Post Recruitment Examination Rules, 1985, the Petitioner had appeared in the examination in year 2004 and had passed the said examination in first attempt. Petitioner was confirmed on the Post of Senior Assistant (Accounts) with effect from 05.02.2007. Petitioner was aspiring for the promotional post of Deputy Accountant (Junior Accounts Officer). As per Rule 3, 4 and 5 of Maharashtra Zilla Parishad District Services (Class-III)(Accounts)(Grade-III) Training and Examination Rules, 1991, the employees those have completed two years continuous service on the post of Senior Assistant (Accounts) are eligible for the examination, required to be passed for getting the promotion to the post of Deputy Accountant. According to the aforesaid Rules, the aspiring candidates is expected and is required to pass the said examination in three

chances within the period of 5 years.

5) It is the contention of the Petitioner that, she passed the aforesaid examination in the third chance within 5 years, after she had become eligible to appear for the said examination. It is the further contention of the Petitioner that, she was, therefore, rightly declared to have been passed in the said examination and consequently was promoted to the post of Deputy Accountant (Junior Accounts Officer). It is the further case of the Petitioner that, however, on some false complaints and because of incorrect and erroneous interpretation of the relevant eligibility criteria, the Respondent No.2 passed an erroneous order directing her reversion to the Post of Senior Accounts Officer and accordingly Respondent No.3 passed the impugned order and reverted the Petitioner from the post of Junior Accounts Officer to the post of Senior Assistant (Accounts).

6) The learned Counsel Mr. H.I. Pathan, appearing for the Petitioner brought to our notice the relevant Rules i.e. Maharashtra Zilla Parishad District Service Post Recruitment Examination Rules, 1985 and Maharashtra Zilla Parishad District Services (Class-III)(Accounts)(Grade-III) Training and Examination Rules, 1991. The learned Counsel invited our attention to rules 3, 4, 5 and 17 of the said Rules. We found it appropriate to reproduce the said Rules, which are thus:

*"**3.** Necessity of passing the examination – Subject to the provisions of these rules, every person appointed to the post of Senior Assistant (Accounts) in District Service (Class III) in District Service (Class III) (Accounts) Grade-III, on the appointed date and who has completed two years' continuous service in that post, shall be required to pass the examination within the period and chances specified in Rule 4.*

***4.** Period and number of chances in which examination to be passed* **–**

(1) Subject to the provisions in sub-rule(2), every person appointed to the post of Senior Assistant (Accounts) shall be required to pass the examination within three chances in a period of five years immediately following the training, including any chances which may have been availed of under the existing rules.

(2) Persons belonging to Scheduled Castes, Scheduled Tribes, Nomadic Tribes, Denoified Tribes and Neo-Bhddhists formerly belonging to Scheduled Castes shall be eligible to avail of one additional chance over and above the chances mentioned in sub-rule (1)

***(5)** Consequences of failure to pass examination* **-** *A Senior Assistant (Accounts) who fails to pass the examination within the time limit and chances specified in rule 4, shall lose seniority for the purpose of promotion to the post of Junior Accounts Officer to all Senior Assistant (Accounts) who pass the examination before him and also to all those who are senior to such Senior Assistant (Accounts) below whom he is placed, and who may* *pass the examination after him but within the period specified in Rule 4.*

(17) *Application for appearing in the examination – (1) Senior Assistant (Accounts) who has two years' continuous service and has completed accounts training held by the Commissioner, Konkan Division or any other Divisional Commissioner, as the case may be, is eligible to appear for the examination.*

(2) Senior Assistant (Accounts) who desires to appear for the examination schedule to be held in a year shall apply in writing in the form prescribed in Appendix "C" to the Commissioner, Konkan Division, or as the case may be, to the Divisional Commissioner holding the examination for candidates in a district before the 1st day of August of that year.

7) The learned Counsel submitted that, the Petitioner was appointed on the post of Senior Assistant (Accounts) vide order dated 20.02.2004 and joined on the same day. The learned Counsel submitted that, she completed her two years' service period as Senior Assistant (Accounts) on 20.02.2006. The learned Counsel submitted that, Petitioner appeared for the examination to the promotional Post of Deputy Accountant (Junior Accounts Officer) for the first time in October 2007. The Petitioner could not get through the said examination and, she therefore, appeared for the 2nd time for the said examination in October 2008. Her second attempt was also unsuccessful.

However, in the 3rd attempt she appeared for the said examination in November 2009 and passed the said examination. The learned Counsel submitted that, the Petitioner thus passed the said examination within three chances and within the period of 5 years immediately following the training as prescribed in rule 4 of the Rules, 1991. The learned Counsel submitted that, in such circumstances, she was rightly promoted to the post of Deputy Accountant (Junior Accounts Officer). The learned Counsel further submitted that, the learned Divisional Commissioner, Aurangabad Division, wrongly held that the period of 3 chances to be availed by the Petitioner had expired in the year 2008 itself and, as such, though the Petitioner passed the said examination in the year 2009, she had lost her right to be promoted to the post of Deputy Accountant (Junior Accounts Officer) and the promotion so granted to her was illegal.

8) The learned Counsel submitted that, after passing of the order dated 10.09.2012 by the Chief Executive Officer (Respondent No.3), the Petitioner was required to file Writ Petition before this Hon'ble Court. The learned Counsel submitted that, after hearing the Counsel for the Petitioner, the State and Zilla Parishad, the Division Bench of this Court had permitted the Petitioner to make appropriate representation to the Divisional Commissioner, Aurangabad Division, Aurangabad

and the Divisional Commissioner, Aurangabad was also directed to take review of his directions after extending an opportunity of hearing to the Petitioner. The learned Counsel submitted that, in pursuance of the order passed by the Division Bench, the Petitioner preferred an appeal with the Divisional Commissioner, Aurangabad. The learned Counsel further submitted that, the learned Divisional Commissioner, Aurangabad, rejected the appeal so filed by the Petitioner and confirmed its previous order passed on 07.08.2012.

9) We have carefully perused the letter dated 07.08.2012, whereby Respondent No.2 had directed Respondent No.3 to act upon the instructions and/or directions dated 15.12.2012. Vide letter dated 15.12.2015, the Respondent No.2 had directed Respondent No.3 to reconsider the promotion given to the Petitioner observing that, it was wrongly given and that the Petitioner had lost her original seniority, since she had failed in passing the examination for seeking promotion to the post of Deputy Accountant, within the period of 5 years and within three chances.

10) On perusal of the aforesaid communications dated 07.08.2012 and 15.02.2012, it is apparently revealed that, the Respondent No.2 has grossly erred in interpreting the relevant Rules. We have reproduced herein above the relevant Rules of

1991. Rule 17 of the Rules 1991 prescribes that, the Senior Assistant (Accounts) who has two years' continuous service and who has completed accounts training held by the Commissioner, Kokan Division or any other Divisional Commissioner, as the case may be, is eligible to appear for the examination. Similarly, Rule 3 of Rules 1991 also provides that, subject to the provisions of the said rules, every person appointed to post of Senior Assistant (Accounts) on the appointed date and <u>who has completed two years' continuous service in that post</u>, shall be required to pass the examination within the period and chances specified in Rule 4. Rule 4 says that, every person appointed to the post of Senior Assistant (Accounts) shall be required to pass the examination within three chances in a period of five years immediately following the training.

11) In so far as training part is concerned, the learned Counsel has placed on record the communication dated 08.11.2001 addressed to the Divisional Commissioner, Konkan Region, Konkan Bhavan, Navi Mumbai by the Deputy Secretary of the State of Maharashtra, wherein it is clarified that, since the training center is not functioning since 1996, no training could be imparted to the Senior Assistants (Accounts) for making them eligible for appearing in the promotional examination to the post of Deputy Accountant. In the said communication it is further

stated that, since training center is not functioning, the candidates who could not be given the training will also be eligible to appear in the examination for the promotional post of Deputy Accountant. It is further clarified that, since considerable time is likely to be required for making the training center functional, the State Government is granting permission for declaring the results of the promotional examinations to be held for the post of Deputy Accountant.

12) Now the second aspect; since when the period of five years is to be computed? In view of Rule 3 and Rule 17 of the Rules of 1991, the Senior Assistant (Accounts) who has completed two years' of service in the said post, only can appear for the promotional examination. It is therefore clear that, the period of five years would start after a person working on the post of Senior Assistant (Accounts) completes the period of two years' of service on the said post. There is no dispute that, the Petitioner was appointed and resumed on the post of Senior Assistant (Accounts) on 20.02.2004. Her two years' service was therefore completed on 19.02.2006, the period of five years was to be computed from the said date and not from 20.02.2004. In the circumstances, the averment in the communication dated 07.08.2012 and 15.02.2012 that, the three chances and the five years period in so far as the Petitioner is concerned was expired

in the year 2008 is apparently wrong.

13) In the affidavit in reply filed on behalf of Respondents No.1 and 2, it is averred that, the Petitioner passed the promotional examination in the 6th attempt and was therefore not eligible to be promoted to the post of Deputy Accountant. The averment as aforesaid is absolutely incorrect and without any foundation. All the documents on record reveal that, the Petitioner passed the promotional examination in the 3rd attempt in the year 2009. It is not disputed that, the Petitioner had passed the post recruitment examination in December, 2004 i.e. within the period as prescribed by the Rules of 1985. There is further no dispute that, the Petitioner passed the promotional examination for the post of Deputy Accountant in November, 2009. Petitioner has pleaded a categorical case that, she passed the promotional examination in 3rd attempt and she has also provided the particulars of attempts so taken by her. The said contentions have not been denied or disputed by the Respondents. Moreover, the same are supported by the documentary evidence. Thus, the Petitioner has fully established that, she passed the promotional examination within three chances in the period of five years after she has became eligible to appear for the said promotional examination in the year 2006.

14) Moreover, even if the period of five years is computed from the date on which the Petitioner passed the post recruitment examination i.e. December, 2004, the Petitioner has passed the departmental/promotional examination within the period of five years therefrom. Admittedly, the Petitioner has passed the promotional examination in November, 2009.

15) The Petitioner has specifically stated in Para 5 of her Petition that, she had appeared for the promotional examination for the first time in the year 2007, more particularly on 24.08.2007. It is further stated that, she did not succeed in the 1st attempt and she was therefore required to avail 2nd attempt in October, 2008. In the said examination also the Petitioner failed, and therefore, she was required to apply again as a 3rd chance to appear in the examination to be held in November, 2009, which was accordingly granted and in the said attempt she succeeded in passing the said examination.

16) The specific contentions raised as above have not been denied or disputed by the Respondents in their affidavits in reply. The Petitioner has also categorically stated that, in Annexure 'P' to the Petition, which is the letter dated 10th November, 2009 addressed to Respondent No.3 by Respondent No.2, the name of the present Petitioner has been wrongly

mentioned. In the affidavit in reply, the contention is raised that, the Petitioner at the relevant time did not raise any objection to the aforesaid letter dated 10.11.2009 as well as to the inclusion of her name in Annexure ‘P’, which was suggesting that permission was granted to the Petitioner to appear for the promotional examination as a special case by way of 6th attempt. It is the further contention in affidavit in reply that, since no grievance was raised in respect of the aforesaid communication, it has to be presumed that the Petitioner did pass the examination in 6th attempt and she was not therefore eligible for promotion.

17) We are, however, not convinced with the contentions so raised. Merely because the Petitioner did not object or raised any grievance in regard to inclusion of her name in Annexure ‘P’ to the letter dated 10th November, 2009, no such inference can be drawn that the Petitioner passed the promotional examination in 6th attempt. If that would be the case, the Respondents were cast with the burden to place on record the necessary particulars as regards to the first five unsuccessful attempts availed by the Petitioner of appearing for the promotional examination. Admittedly, no such particulars are placed on record, and in such circumstances, the specific case made out by the Petitioner that, she passed the promotional examination in the 3rd attempt in

November, 2009 has to be accepted. There is every reason to believe that, since the Petitioner had passed the promotional examination within three chances in the period of five years, she was rightly promoted to the post of Deputy Accountant vide order passed on 08.08.2011. However, because Respondents No. 5 to 7 made compliant to Respondent No.2, the Petitioner was reverted to her original post. It is significant to note that, though Respondents No.5 to 7 are duly served, had not marked the appearance in the matter, nor have filed any reply on affidavit. In absence of any specific material brought on record by the Respondents to show that, the Petitioner had passed the promotional examination in 6^{th} attempt, we are unable to accept the bald contention so raised by the Respondents. We do not find any reason in not accepting the contention of the Petitioner that, she passed the promotional examination within three chances in a period of five years, which is supported by necessary particulars.

18) In the facts and circumstances as above, the impugned order dated 05.07.2013 is liable to be set aside and it is accordingly set aside. Consequently the previous orders dated 15.02.2012 and 07.08.2012 also stand set aside and quashed. We are constrained to observe that, the Petitioner was unnecessarily dragged to the litigation twice for want of proper

appreciation of the relevant Rules by the authorities concerned. The Petitioner is therefore entitled to the costs from the Respondents. We quantify the same to the tune of Rs.10,000/- and direct the Respondent Nos. 2 and 3 to pay same to the Petitioner.

19) The Petition accordingly stands disposed of. Rule made absolute in above terms.

P.R. Bora, **Judge**	**S.S. Shinde,** **Judge**

S P Rane